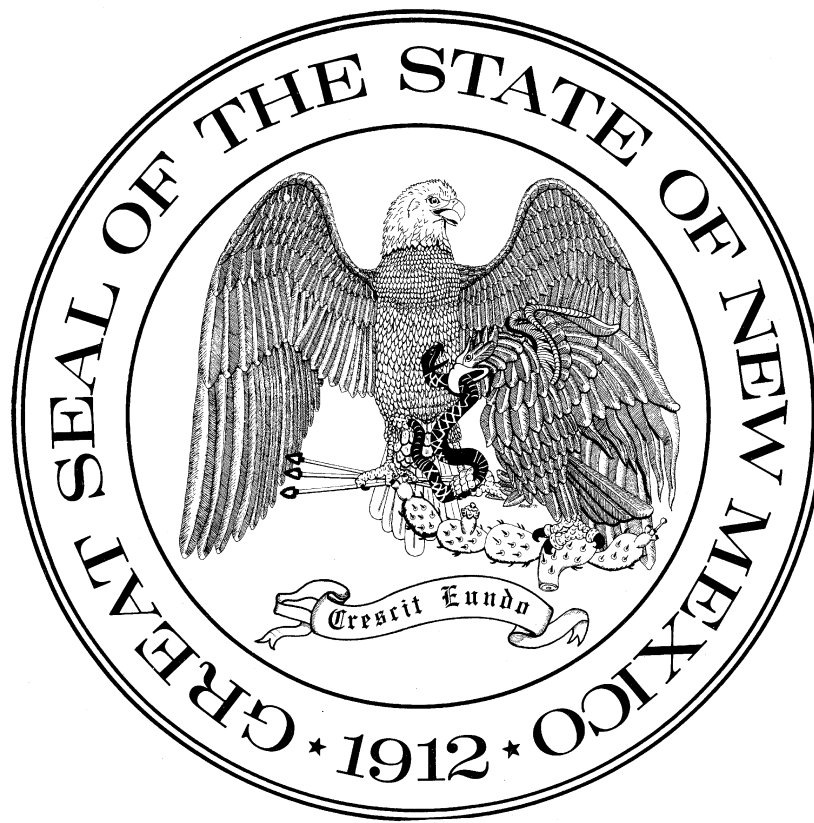


**TOBACCO SETTLEMENT REVENUE
OVERSIGHT COMMITTEE**

2014 INTERIM



**New Mexico Legislative Council Service
Santa Fe, New Mexico
January 2015**

CONTENTS

Summary

**Tobacco Settlement Revenue Oversight Committee Fiscal Year 2016
Recommendations**

Legislation Endorsed by the Committee

2014 Interim Work Plan

Committee Agendas

Committee Minutes

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE 2014 SUMMARY

Background

On November 23, 1998, the attorneys general of 46 states entered into a Master Settlement Agreement (MSA) with the four largest tobacco companies in the United States: Brown & Williamson; Lorillard; Philip Morris; and R.J. Reynolds (participating manufacturers). Under the terms of the agreement, the participating manufacturers agreed to prohibitions and restrictions on the marketing and advertising of their tobacco products and to compensate the states for costs associated with tobacco-related illness and disease attributed to the participating manufacturers' products. In turn, the states agreed to enact model legislation, or a similar qualifying statute, to charge tobacco manufacturers that did not participate in the MSA an escrow payment and to diligently enforce such laws. Later, an additional 50 tobacco companies joined the MSA. Beginning in 1999, New Mexico has passed various MSA-related legislation.

The Tobacco Settlement Revenue Oversight Committee (TSROC) was created in 2000 as a joint interim legislative committee to monitor the use of revenues received as a result of the MSA. The committee meets during the interim to evaluate programs that receive appropriations from tobacco settlement revenues. Each year, the TSROC receives testimony regarding the performance of funded programs and makes recommendations for future funding. Funding recommendations for fiscal year 2016 were provided to the Legislative Finance Committee on December 10, 2014 by Representative Elizabeth "Liz" Thomson, the committee co-chair.

In 1999, the Tobacco Settlement Permanent Fund (permanent fund), consisting of money distributed to the state pursuant to the MSA, was created. In 2000, the Tobacco Settlement Program Fund (program fund), consisting of distributions from the permanent fund, was established. Appropriations are made from the program fund for health and education purposes. The Department of Health, the Human Services Department (Medicaid) and the University of New Mexico Health Sciences Center have historically been the primary recipients of such appropriations.

Beginning in fiscal year 2001, the distribution to the program fund from the permanent fund was limited to 50% of the MSA settlement funds received by the state in the preceding fiscal year, until such time as that amount is less than 4.7% of the average of the year-end market values of the permanent fund for the preceding five years. The remaining 50% was to be retained in the permanent fund. In 2003, an amendment made the permanent fund a reserve fund of the state that could be expended, under certain circumstances, to avoid an unconstitutional deficit. At various times since, other amendments have allowed for distributions from the permanent fund to the general fund or for additional distributions to the program fund. In most of the fiscal years since the creation of the permanent fund, amounts equal to the total annual MSA settlement payment have been appropriated, with no increase to the corpus of the permanent fund.

The Office of the Attorney General (OAG) regularly reports to the TSROC regarding enforcement of, and compliance with, the MSA. An arbitration proceeding challenging the

state's diligent enforcement efforts for calendar year 2003 was concluded in September 2013, with a ruling against the state on this issue. Among factors supporting the panel's finding of "an overall culture of non-compliance" were: 1) missing or poor documentation by the state relating to required reporting by nonparticipating manufacturers (NPMs); 2) the state's failure to sue noncompliant NPMs; 3) the state's lack of a plan or guidelines to collect data from NPMs or to educate NPMs as to their reporting obligations; 4) lack of funding and personnel dedicated to enforcement; 5) increased 2003 sales over those of previous years by a noncompliant NPM; 6) failure on the state's part to sufficiently and timely publicize complementary legislation or to notify distributors of new legislation; 7) the state's failure to make use of the Cigarette Enforcement Act to seize noncompliant foreign cigarettes; 8) lack of documentation demonstrating enforcement actions such as seizures, injunctions, settlement efforts or regulations as supplementary enforcement tools; and 9) lack of documentation showing participation in, follow-up on or sharing of information from the National Association of Attorneys General's tobacco project, which was formed to assist states in MSA enforcement.

The OAG has advised the TSROC that the recent arbitration decision for calendar year 2003 appears to obviate the need for legislation amending the definition of "units sold" to include both "tax-exempt" and "tax-credit" stamps for the purposes of determining escrow payments of cigarette manufacturers that are not participating in the MSA. In prior years, such legislation was passed (but vetoed) to "remove ambiguity under current law about which sales are subject to escrow payment and to ensure equalization of treatment of participating and nonparticipating manufacturers". The OAG interprets the lack of specific findings on this issue to mean that the arbitration panel agreed with the state's position that tribal sales are not, and have never been, subject to escrow.

According to the OAG, the participating manufacturers are pursuing diligent enforcement challenges against New Mexico for succeeding years. A different panel of arbitrators will hear future proceedings. Further, the findings of the calendar year 2003 arbitration panel are not binding on future panels. There is also uncertainty regarding when such future arbitration proceedings and resulting findings are likely to occur. Accordingly, while it is possible that the state could be facing future adverse diligent enforcement determinations, the OAG does not expect a resulting reduction in future annual MSA payments to occur every year.

The adjustment resulting from the arbitration award in September 2013 was deducted from the annual MSA payment to the state in fiscal year 2014. As a result, the payment received for fiscal year 2014 was \$21.2 million. MSA revenue is projected to be \$39.9 million in fiscal year 2015 and \$40.1 million in fiscal year 2016. As of September 2014, the balance in the permanent fund was \$192.1 million.

TSROC Recommended Fiscal Year 2016 Appropriations

After meeting five times to receive testimony from agencies and programs currently receiving appropriations, and after being advised of the recent MSA arbitration award, the committee adopted funding recommendations for fiscal year 2016. A copy of the fiscal year 2016 recommendations is attached.

Endorsed Legislation

E-cigarettes are devices that use a heating element to atomize liquid resulting in aerosolized vapor that is inhaled into the lungs, with the practice called "vaping". According to committee presentations, the liquid may contain nicotine as well as other toxic substances such as heavy metals, propylene glycol and volatile organic compounds. The nicotine, if any, may or may not be derived from tobacco. There are limited data regarding the short- or long-term safety of these devices. There are no standards by which these products must be manufactured or labeled. While it appears that the federal Food and Drug Administration (FDA) is likely to regulate e-cigarettes as nicotine delivery devices, they are not currently subject to FDA regulations or regulated in New Mexico.

Experts appearing before the committee presented evidence that e-cigarettes are being marketed to youth. The committee has endorsed a bill to include e-cigarettes under the current Tobacco Products Act to prohibit the sale, including the online internet sale, of e-cigarettes to minors. A copy of the bill is attached.

A second bill pertaining to e-cigarettes was also endorsed by the committee. That bill amends the Tobacco Products Tax Act to impose a tax on liquid nicotine solutions that are used in e-cigarettes. The tax would be imposed at a rate of four cents (\$.04) per milligram of nicotine contained in nicotine products, regardless of the volume of the container. In addition, the bill requires each manufacturer of nicotine products to affix a label to each unit identifying the total quantity in milligrams of nicotine contained in the product and provides that the Taxation and Revenue Department shall conduct period compliance checks to ensure accurate reporting of nicotine content. A copy of the bill is attached.

TOBACCO SETTLEMENT OVERSIGHT COMMITTEE
FISCAL YEAR 2016 RECOMMENDATIONS

TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE
FY 2015 APPROPRIATIONS; FY 2016 REQUESTS AND RECOMMENDATIONS
(in thousands of dollars)

	FY2015 Programs Funded	FY2015 % of half of MSA Payment	FY2016 Program Requests	FY2016 TSROC Recommendations
AGENCY AND PROGRAM				
(609) Indian Affairs Department				
Tobacco cessation and prevention programs	\$249.3	1.293%	\$249.3	\$249.3
Total Indian Affairs Department	\$249.3	1.293%	\$249.3	\$249.3
(630) Human Services Department				
Medicaid -- Breast & cervical cancer treatment program	\$1,312.4	6.806%	\$1,312.4	\$1,312.4
Medicaid	\$7,907.3	41.007%	\$7,907.3	\$6,907.3
Total Human Services Department	\$9,219.7	47.813%	\$9,219.7	\$8,219.7
(665) Department of Health				
Tobacco cessation and prevention programs	\$5,682.0	29.467%	\$5,682.0	\$5,682.0
Diabetes prevention and control program	\$748.0	3.879%	\$748.0	\$748.0
HIV/AIDS prevention, services and medicine	\$293.0	1.519%	\$293.0	\$293.0
Breast & cervical cancer (BCC) screening program	\$128.6	0.667%	\$128.6	\$128.6
BCC screening program -- for 3D mammograms				\$1,000.0
Total Department of Health	\$6,851.6	35.532%	\$6,851.6	\$7,851.6
(952) University of New Mexico				
Instruction and general purposes	\$607.9	3.153%	\$607.9	\$607.9
Research in genomics and environmental health	\$979.8	5.081%	\$979.8	\$979.8
Poison control center	\$590.2	3.061%	\$590.2	\$590.2
Pediatric oncology program	\$261.4	1.356%	\$261.4	\$261.4
Specialty education in trauma	\$261.4	1.356%	\$261.4	\$261.4
Specialty education in pediatrics	\$261.4	1.356%	\$261.4	\$261.4
Total University of New Mexico	\$2,962.1	15.363%	\$2,962.1	\$2,962.1
Other requests				
Family Infant Toddler Program*			\$5,000.0	\$5,000.0
Total Other Requests			\$5,000.0	\$5,000.0
TOTAL	\$19,282.7		\$24,282.7	\$24,282.7

**Not requested by Department of Health*

LEGISLATION ENDORSED BY THE COMMITTEE

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HOUSE BILL

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52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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INTRODUCED BY

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FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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AN ACT

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RELATING TO PUBLIC HEALTH; AMENDING THE TOBACCO PRODUCTS ACT TO

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CHANGE THE TITLE OF THE ACT TO THE "TOBACCO PRODUCTS AND E-

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CIGARETTE ACT", TO PROHIBIT SALES OF E-CIGARETTES TO MINORS AND

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TO PROHIBIT THE ONLINE INTERNET SALE OF E-CIGARETTES TO A MINOR

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IN NEW MEXICO; PROVIDING PENALTIES.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. Section 30-49-1 NMSA 1978 (being Laws 1993,

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Chapter 244, Section 1) is amended to read:

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"30-49-1. SHORT TITLE.--~~[This act]~~ Chapter 30, Article 49

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NMSA 1978 may be cited as the "Tobacco Products and E-Cigarette

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Act".

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SECTION 2. Section 30-49-2 NMSA 1978 (being Laws 1993,

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Chapter 244, Section 2) is amended to read:

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"30-49-2. ~~[DEFINITION]~~ DEFINITIONS.--As used in the

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Tobacco Products and E-Cigarette Act:

A. "e-cigarette":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; and

B. "minor" means an individual who is less than eighteen years of age."

SECTION 3. Section 30-49-3 NMSA 1978 (being Laws 1993, Chapter 244, Section 3) is amended to read:

"30-49-3. TOBACCO AND E-CIGARETTES--PROHIBITED SALES.--

A. No person shall knowingly sell, offer to sell, barter or give ~~[any]~~ a tobacco product or an e-cigarette to ~~[any]~~ a minor.

B. No minor shall procure or attempt to procure any tobacco products or e-cigarette for ~~[his]~~ the minor's own use or for use by ~~[any other]~~ another minor.

C. No person shall sell, offer to sell or deliver a tobacco product or an e-cigarette in a form other than an original factory-sealed package."

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SECTION 4. Section 30-49-5 NMSA 1978 (being Laws 1993,
Chapter 244, Section 5) is amended to read:

"30-49-5. REFUSAL TO SELL TOBACCO PRODUCTS OR
E-CIGARETTES TO PERSON UNABLE TO PRODUCE IDENTITY CARD.--~~[Any]~~
A person selling goods at retail or wholesale may refuse to
sell tobacco products or e-cigarettes to ~~[any]~~ a person who is
unable to produce an identity card as evidence that ~~[he]~~ the
person is eighteen years of age or over."

SECTION 5. Section 30-49-6 NMSA 1978 (being Laws 1993,
Chapter 244, Section 6) is amended to read:

"30-49-6. PRESENTING FALSE EVIDENCE OF AGE OR IDENTITY.--
No minor shall present any written, printed or photostatic
evidence of age or identity that is false for the purpose of
procuring or attempting to procure any tobacco products or e-
cigarettes."

SECTION 6. Section 30-49-7 NMSA 1978 (being Laws 1993,
Chapter 244, Section 7, as amended) is amended to read:

"30-49-7. VENDING MACHINES--RESTRICTIONS ON SALES OF
TOBACCO PRODUCTS AND E-CIGARETTES.--

A. Except as provided in Subsections B and C of
this section:

(1) a person shall not sell tobacco products
or e-cigarettes at a retail location in New Mexico by any means
other than a direct, face-to-face exchange between the customer
and the seller or the seller's employee; and

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(2) a person selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products or e-cigarettes. As used in this subsection, "self-service display" means a display to which the public has access without the assistance of the seller or the seller's employee.

B. Tobacco products or e-cigarettes may be sold by vending machines [~~in the following locations~~] only

~~[(1) in locations not held open to the public, including controlled areas within factories, businesses and offices;~~

~~(2) in locations in which the vending machine is equipped with a remote-controlled lock-out device; or~~

~~(3)] in age-controlled locations where minors are not permitted [unless accompanied by a parent or guardian].~~

C. The provisions of this section do not apply to written, telephonic or electronic sales of tobacco products.

D. The online internet sale of e-cigarettes to a minor in New Mexico is prohibited."

SECTION 7. Section 30-49-8 NMSA 1978 (being Laws 1993, Chapter 244, Section 8) is amended to read:

"30-49-8. DISTRIBUTION OF TOBACCO PRODUCTS OR E-CIGARETTES AS FREE SAMPLES PROHIBITED--EXCEPTION.--

A. A person who sells, distributes, promotes or advertises tobacco products or e-cigarettes shall not provide

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free samples of tobacco products or e-cigarettes to a minor.

2 B. The provisions of Subsection A of this section
3 shall not apply to an individual who provides free samples of
4 tobacco products [~~to a family member or to an acquaintance on~~
5 ~~private property not held open to the public~~] in connection
6 with the practice of cultural or ceremonial activities by
7 Native Americans in accordance with the federal American Indian
8 Religious Freedom Act, 42 U.S.C. 1996 and 1996a."

9 SECTION 8. Section 30-49-9 NMSA 1978 (being Laws 1993,
10 Chapter 244, Section 9) is amended to read:

11 "30-49-9. SIGNS--POINT OF SALE.--A person, firm,
12 corporation, partnership or other entity engaged in the sale at
13 retail of tobacco products or e-cigarettes shall prominently
14 display in the place where tobacco products or e-cigarettes are
15 sold and where a tobacco product or e-cigarette vending machine
16 is located a printed sign or decal that reads as follows:

17 "A PERSON LESS THAN 18 YEARS OF AGE WHO PURCHASES A
18 TOBACCO PRODUCT OR E-CIGARETTE IS SUBJECT TO A FINE OF UP TO
19 [~~\$1,000~~] \$100.

20 A PERSON WHO SELLS A TOBACCO PRODUCT OR E-CIGARETTE TO A
21 PERSON LESS THAN 18 YEARS OF AGE IS SUBJECT TO A FINE OF UP TO
22 \$1,000."."

23 SECTION 9. Section 30-49-10 NMSA 1978 (being Laws 1993,
24 Chapter 244, Section 10) is amended to read:

25 "30-49-10. MONITORED COMPLIANCE--INSPECTIONS.--The
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2 alcohol and gaming division of the regulation and licensing
3 department and the appropriate law enforcement authorities in
4 each county and municipality shall conduct random, unannounced
5 inspections of facilities where tobacco products or e-
6 cigarettes are sold to ensure compliance with the provisions of
the Tobacco Products and E-Cigarette Act."

7 **SECTION 10.** Section 30-49-11 NMSA 1978 (being Laws 1993,
8 Chapter 244, Section 11) is amended to read:

9 "30-49-11. PREEMPTION.--When a municipality or county
10 adopts an ordinance or a regulation pertaining to sales of
11 tobacco products or e-cigarettes, the ordinance or regulation
12 shall be consistent with the provisions of the Tobacco Products
13 and E-Cigarette Act."

14 **SECTION 11.** Section 30-49-12 NMSA 1978 (being Laws 1993,
15 Chapter 244, Section 12) is amended to read:

16 "30-49-12. PENALTY.--

17 A. Any person who violates any provision of
18 Subsection A of Section [~~3 or Sections 5, 7, 8 or 9 of the~~
19 ~~Tobacco Products Act~~] 30-49-3 NMSA 1978 or Section 30-49-7,
20 30-49-8 or 30-49-9 NMSA 1978 is guilty of a misdemeanor and
21 shall be sentenced pursuant to the provisions of Section
22 31-19-1 NMSA 1978. Each violation is a separate and distinct
23 offense.

24 B. Any minor who violates any provision of
25 Subsection B of Section [~~3 or Section 6 of the Tobacco Products~~
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~~Act]~~ 30-49-3 NMSA 1978 or Section 30-49-6 NMSA 1978 shall be
punished by a fine not to exceed one hundred dollars (\$100) or
forty-eight hours of community service."

SECTION 12. A new section of the Tobacco Products and E-
Cigarette Act is enacted to read:

"[NEW MATERIAL] APPLICABILITY.--The provisions of the
Tobacco Products and E-Cigarette Act do not apply to the lawful
purchase or use by a minor of a tobacco-cessation product
approved by the federal food and drug administration."

SECTION 13. TEMPORARY PROVISION.--Not later than August
1, 2015, the public education department shall revise its
tobacco, alcohol and drug free school districts policy to
include e-cigarettes, as defined in Section 30-49-2 NMSA 1978.

underscored material = new
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SENATE BILL

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52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

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INTRODUCED BY

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FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

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AN ACT

11

RELATING TO TAXATION; AMENDING AND ENACTING SECTIONS OF THE

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TOBACCO PRODUCTS TAX ACT TO CHANGE THE TITLE OF THE ACT TO THE

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"TOBACCO AND NICOTINE PRODUCTS TAX ACT", TO IMPOSE A TAX ON

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NICOTINE PRODUCTS, TO REQUIRE NICOTINE CONTENT LABELING ON ALL

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NICOTINE PRODUCTS AND TO PERMIT THE TAXATION AND REVENUE

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DEPARTMENT TO CONDUCT PERIODIC COMPLIANCE CHECKS TO ENSURE

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ACCURATE NICOTINE CONTENT LABELING ON NICOTINE PRODUCTS.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. Section 7-1-2 NMSA 1978 (being Laws 1965,

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Chapter 248, Section 2, as amended) is amended to read:

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"7-1-2. APPLICABILITY.--The Tax Administration Act

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applies to and governs:

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A. the administration and enforcement of the

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following taxes or tax acts as they now exist or may hereafter

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be amended:

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(1) Income Tax Act;

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(2) Withholding Tax Act;

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(3) Venture Capital Investment Act;

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(4) Gross Receipts and Compensating Tax Act

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and any state gross receipts tax;

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(5) Liquor Excise Tax Act;

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(6) Local Liquor Excise Tax Act;

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(7) any municipal local option gross receipts

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tax;

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(8) any county local option gross receipts

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tax;

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(9) Special Fuels Supplier Tax Act;

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(10) Gasoline Tax Act;

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(11) petroleum products loading fee, which fee

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shall be considered a tax for the purpose of the Tax

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Administration Act;

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(12) Alternative Fuel Tax Act;

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(13) Cigarette Tax Act;

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(14) Estate Tax Act;

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(15) Railroad Car Company Tax Act;

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(16) Investment Credit Act, rural job tax

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credit, Laboratory Partnership with Small Business Tax Credit

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Act, Technology Jobs Tax Credit Act, film production tax

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credit, New Mexico filmmaker tax credit, Affordable Housing Tax

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1 Credit Act, high-wage jobs tax credit and Research and
2 Development Small Business Tax Credit Act;
3 (17) Corporate Income and Franchise Tax Act;
4 (18) Uniform Division of Income for Tax
5 Purposes Act;
6 (19) Multistate Tax Compact;
7 (20) Tobacco and Nicotine Products Tax Act;
8 and
9 (21) the telecommunications relay service
10 surcharge imposed by Section 63-9F-11 NMSA 1978, which
11 surcharge shall be considered a tax for the purposes of the Tax
12 Administration Act;
13 B. the administration and enforcement of the
14 following taxes, surtaxes, advanced payments or tax acts as
15 they now exist or may hereafter be amended:
16 (1) Resources Excise Tax Act;
17 (2) Severance Tax Act;
18 (3) any severance surtax;
19 (4) Oil and Gas Severance Tax Act;
20 (5) Oil and Gas Conservation Tax Act;
21 (6) Oil and Gas Emergency School Tax Act;
22 (7) Oil and Gas Ad Valorem Production Tax Act;
23 (8) Natural Gas Processors Tax Act;
24 (9) Oil and Gas Production Equipment Ad
25 Valorem Tax Act;

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(10) Copper Production Ad Valorem Tax Act;

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(11) any advance payment required to be made
by any act specified in this subsection, which advance payment
shall be considered a tax for the purposes of the Tax
Administration Act;

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(12) Enhanced Oil Recovery Act;

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(13) Natural Gas and Crude Oil Production
Incentive Act; and

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(14) intergovernmental production tax credit
and intergovernmental production equipment tax credit;

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C. the administration and enforcement of the following
taxes, surcharges, fees or acts as they now exist or may
hereafter be amended:

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(1) Weight Distance Tax Act;

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(2) the workers' compensation fee authorized
by Section 52-5-19 NMSA 1978, which fee shall be considered a
tax for purposes of the Tax Administration Act;

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(3) Uniform Unclaimed Property Act (1995);

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(4) 911 emergency surcharge and the network
and database surcharge, which surcharges shall be considered
taxes for purposes of the Tax Administration Act;

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(5) the solid waste assessment fee authorized
by the Solid Waste Act, which fee shall be considered a tax for
purposes of the Tax Administration Act;

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(6) the water conservation fee imposed by

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Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

SECTION 2. Section 7-12A-1 NMSA 1978 (being Laws 1986, Chapter 112, Section 2) is amended to read:

"7-12A-1. SHORT TITLE.--Chapter 7, Article 12A NMSA 1978 may be cited as the "Tobacco and Nicotine Products Tax Act".

SECTION 3. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

"7-12A-2. DEFINITIONS.--As used in the Tobacco and Nicotine Products Tax Act:

A. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "distribute" means to sell or to give;

C. "electronic delivery device" means any electronic device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of

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nicotine, the use or inhalation of which simulates smoking;

2 ~~[G-]~~ D. "engaging in business" means carrying on or
3 causing to be carried on any activity with the purpose of
4 direct or indirect benefit;

5 ~~[D-]~~ E. "first purchaser" means a person engaging
6 in business in New Mexico who manufactures tobacco products or
7 nicotine products or who purchases or receives on consignment
8 tobacco products or nicotine products from any person outside
9 of New Mexico, which tobacco products or nicotine products are
10 to be distributed in New Mexico in the ordinary course of
11 business;

12 F. "nicotine product" means a liquid solution
13 containing nicotine that is intended for human consumption via
14 an electronic delivery device;

15 ~~[E-]~~ G. "person" means any individual, estate,
16 trust, receiver, cooperative association, club, corporation,
17 company, firm, partnership, joint venture, syndicate, limited
18 liability company, limited liability partnership, other
19 association or gas, water or electric utility owned or operated
20 by a county or municipality or other entity of the state;
21 "person" also means, to the extent permitted by law, a federal,
22 state or other governmental unit or subdivision or an agency,
23 department or instrumentality;

24 ~~[F-]~~ H. "product value" means the amount paid, net
25 of any discounts taken and allowed, for tobacco products or, in

1
2 the case of tobacco products received on consignment, the value
3 of the tobacco products received or, in the case of tobacco
4 products manufactured and sold in New Mexico, the proceeds from
5 the sale by the manufacturer of the tobacco products; and

6 [G-] I. "tobacco product" means any product, other
7 than cigarettes, made from or containing tobacco but does not
8 include a nicotine product."

9 SECTION 4. Section 7-12A-4 NMSA 1978 (being Laws 1986,
10 Chapter 112, Section 5, as amended) is amended to read:

11 "7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX AND NICOTINE
12 PRODUCTS TAX.--

13 A. Exempted from the [~~tobacco products~~] tax [~~is the~~
14 ~~product value of~~] imposed by Sections 7-12A-3 and 7-12A-11 NMSA
15 1978 are tobacco products and nicotine products sold:

16 (1) to or by the United States or any agency
17 or instrumentality thereof;

18 (2) to the governing body or any enrolled
19 tribal member licensed by the governing body of an Indian
20 nation, tribe or pueblo to be distributed on the reservation or
21 pueblo grant of that Indian nation, tribe or pueblo; or

22 (3) to the state of New Mexico or any
23 political subdivision thereof.

24 B. As used in this section, the term "agency or
25 instrumentality" does not include persons who are agents or
instrumentalities of the United States for a particular purpose

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2 or only when acting in a particular capacity or corporate
3 agencies or instrumentalities."

4 **SECTION 5.** Section 7-12A-5 NMSA 1978 (being Laws 1986,
5 Chapter 112, Section 6) is amended to read:

6 "7-12A-5. DEDUCTION--INTERSTATE SALES.--

7 A. The product value of tobacco products sold and
8 shipped or given and shipped to a person in another state may
9 be deducted from the product value subject to the tax imposed
10 by the Tobacco and Nicotine Products Tax Act; provided that the
11 department may require the person to submit proof satisfactory
12 to the department that the tobacco products have been sold and
13 shipped or given and shipped to a person in another state.

14 B. The milligrams of nicotine contained in nicotine
15 products sold and shipped or given and shipped to a person in
16 another state may be deducted from the milligrams of nicotine
17 contained in nicotine products subject to the tax imposed by
18 the Tobacco and Nicotine Products Tax Act; provided that the
19 department may require the person to submit proof satisfactory
20 to the department that the nicotine products have been sold and
21 shipped or given and shipped to a person in another state."

22 **SECTION 6.** Section 7-12A-6 NMSA 1978 (being Laws 1986,
23 Chapter 112, Section 7, as amended) is amended to read:

24 "7-12A-6. REFUND OR CREDIT OF TAX.--The department shall
25 allow a claim for refund or credit, as provided in Sections
7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax and

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2 nicotine products tax paid on tobacco products or nicotine
3 products destroyed or returned to the seller by the first
4 purchaser as spoiled or otherwise unfit for sale or
5 consumption; provided that the department may require proof
6 satisfactory to the department that the tobacco products or
7 nicotine products have been destroyed or returned and that the
8 person claiming the refund is the person who paid the tobacco
9 products tax or nicotine products tax on the destroyed or
10 returned tobacco products or nicotine products."

11 SECTION 7. Section 7-12A-7 NMSA 1978 (being Laws 1986,
12 Chapter 112, Section 8) is amended to read:

13 "7-12A-7. REGISTRATION NECESSARY TO ENGAGE IN BUSINESS OF
14 SELLING TOBACCO PRODUCTS OR NICOTINE PRODUCTS IN NEW MEXICO.--
15 Each person engaged in the business of selling tobacco products
16 or nicotine products in New Mexico shall register and comply
17 with the provisions of Section 7-1-12 NMSA 1978. Every person
18 selling tobacco products or nicotine products in New Mexico
19 shall furnish such information as may be requested by the
20 department concerning the person's vending machines or other
21 places of business where tobacco products or nicotine products
22 are sold."

23 SECTION 8. Section 7-12A-8 NMSA 1978 (being Laws 1986,
24 Chapter 112, Section 9, as amended) is amended to read:

25 "7-12A-8. RETENTION OF INVOICES AND RECORDS--INSPECTION
BY DEPARTMENT.--

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A. Each person who sells tobacco products or
nicotine products in New Mexico for resale in New Mexico shall
maintain a file of copies of the invoices of sale for three
years from the end of the year the sale was made. The invoices
shall indicate the date of sale of the tobacco products or
nicotine products, quantity of tobacco products or nicotine
products sold, the price received and the name and address of
the purchaser.

B. Each person who sells tobacco products or
nicotine products in New Mexico shall maintain a file of copies
of invoices under which the person purchased tobacco products
or nicotine products for three years from the end of the year
during which tobacco products or nicotine products were
purchased. The invoices shall indicate the date of purchase,
the quantity of tobacco products or nicotine products
purchased, the price paid and the name and address of the
seller.

C. All invoices required to be kept under this
section may be inspected by the department along with any stock
of tobacco products or nicotine products in the possession of
the purchaser or seller."

SECTION 9. Section 7-12A-9 NMSA 1978 (being Laws 1986,
Chapter 112, Section 10) is amended to read:

"7-12A-9. PENALTIES.--Any person selling tobacco products
or nicotine products in New Mexico and required by the

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2 provisions of Section 7-12A-8 NMSA 1978 to retain invoices who
3 willfully fails to retain the invoices shall, upon conviction
4 thereof, be fined not less than fifty dollars (\$50.00) or more
5 than five hundred dollars (\$500). Jurisdiction over such
6 actions is ~~[hereby]~~ granted to the magistrate courts."

7 **SECTION 10.** Section 7-12A-10 NMSA 1978 (being Laws 1986,
8 Chapter 112, Section 11) is amended to read:

9 "7-12A-10. PROHIBITION.--The provisions of the Tobacco
10 and Nicotine Products Tax Act shall not apply in any case in
11 which New Mexico is prohibited from taxing under the
12 constitution of New Mexico or the constitution or laws of the
13 United States."

14 **SECTION 11.** A new section of the Tobacco and Nicotine
15 Products Tax Act, Section 7-12A-11 NMSA 1978, is enacted to
16 read:

17 "7-12A-11. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--
18 DENOMINATION AS "NICOTINE PRODUCTS TAX"--DATE PAYMENT OF TAX
19 DUE.--

20 A. For the manufacture or acquisition of nicotine
21 products in New Mexico to be distributed in the ordinary course
22 of business and for the consumption of nicotine products in New
23 Mexico, there is imposed an excise tax at the rate of four
24 cents (\$.04) per milligram of nicotine contained in the
25 nicotine products.

B. The tax imposed by Subsection A of this section

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may be referred to as the "nicotine products tax".

2 C. The nicotine products tax shall be paid by the
3 first purchaser on or before the twenty-fifth day of the month
4 following the month in which the taxable event occurs."

5 **SECTION 12.** A new section of the Tobacco and Nicotine
6 Products Tax Act, Section 7-12A-12 NMSA 1978, is enacted to
7 read:

8 "7-12A-12. [NEW MATERIAL] NICOTINE PRODUCTS LABELING--
9 PERIODIC COMPLIANCE TESTING.--

10 A. Every manufacturer of nicotine products shall
11 affix a label to each unit containing a nicotine product to be
12 distributed in the state identifying the total quantity in
13 milligrams of nicotine contained in the nicotine product.

14 B. The department shall conduct periodic compliance
15 checks to ensure accurate reporting of nicotine content as
16 required by Subsection A of this section by obtaining samples
17 of nicotine products from retail locations throughout the
18 state. Samples collected pursuant to this subsection shall be
19 forwarded to the scientific laboratory division of the
20 department of health, which shall determine the nicotine
21 content of each sample and forward the results to the
22 department."

2014 INTERIM WORK PLAN

2014 APPROVED
WORK PLAN AND MEETING SCHEDULE
for the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

Members

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Gail Chasey

Sen. John C. Ryan
Sen. John Arthur Smith
Rep. Monica Youngblood

Advisory Members

Rep. Paul C. Bandy
Rep. Kelly K. Fajardo
Sen. Linda M. Lopez

Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Work Plan

The Tobacco Settlement Revenue Oversight Committee (TSROC) was established pursuant to Section 2-19-1 NMSA 1978. The committee will continue its statutory oversight duties for the programs that request and receive funding through the Tobacco Settlement Program Fund. The committee will also receive testimony regarding the balances in and projected revenues for both the Tobacco Settlement Program Fund and the Tobacco Settlement Permanent Fund.

During the 2014 interim, the TSROC proposes to:

(1) monitor the status of the revenue for current and future fiscal years and reserves for the Tobacco Settlement Permanent Fund and the use of the Tobacco Settlement Program Fund through committee oversight and evaluation of those programs recommended by the committee and funded by the legislature; review the enforcement requirements under the Master Settlement Agreement; and compare recommended funding levels by the federal Centers for Disease Control and Prevention with those funded in New Mexico;

(2) receive testimony regarding tobacco settlement-related issues, litigation and legislation, and prepare recommendations of program funding levels for fiscal year 2016, based on the committee's program evaluation process;

(3) make recommendations to the Legislative Finance Committee on the use of the tobacco settlement revenue;

(4) make findings and recommendations, including proposed legislation, available to the legislature as part of the TSROC's final report; and

(5) receive testimony and examine issues relating to:

(a) e-cigarettes and tobacco products;

- (b) state and federal definitions of "tobacco product";
- (c) proposed federal regulations pertaining to tobacco products;
- (d) the effectiveness of smoking cessation and prevention services within Native American communities in New Mexico;
- (e) the effect of the federal Patient Protection and Affordable Care Act on future Medicaid spending from the Tobacco Settlement Program Fund;
- (f) findings and recommendations of the Tobacco Use and Employer Costs Task Force; and
- (g) potential application of the Dee Johnson Clean Indoor Air Act to e-cigarettes.

**Tobacco Settlement Revenue Oversight Committee
2014 Approved Meeting Schedule**

<u>Date</u>	<u>Location</u>
Wednesday, June 18	Santa Fe, Room 321
Thursday, July 31	Albuquerque
Monday, September 22	Pueblo of Laguna
Tuesday, October 14	Santa Fe, Room 321
Tuesday, November 11	Santa Fe, Room 321

COMMITTEE AGENDAS

Revised: June 11, 2014

**TENTATIVE AGENDA
for the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 18, 2014
Room 321, State Capitol
Santa Fe**

Wednesday, June 18

- 9:30 a.m. **Welcome and Introductions**
—Senator Cisco McSorley, Co-Chair
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:45 a.m. (1) [History of the Master Settlement Agreement in New Mexico; E-Cigarettes and the Food and Drug Administration's Proposed "Deeming" Rules](#)
—Sandra Adondakis, New Mexico Government Relations Director,
American Cancer Society Cancer Action Network
- 11:00 a.m. (2) [Post-Session Update: Tobacco Settlement Permanent and Program Funds](#)
—Peter van Moorsel, Chief Economist, Legislative Finance Committee
- 12:00 noon **Lunch**
- 1:00 p.m. (3) [Review of 2014 Legislation](#)
—Shawn Mathis, Staff Attorney, Legislative Council Service (LCS)
- 2:00 p.m. **Public Comment**
- 2:30 p.m. (4) [Review and Adoption of Interim 2014 Work Plan and Meeting Schedule](#)
—Caela Baker, Staff Attorney, LCS
- 3:00 p.m. **Adjourn**

Revised: July 29, 2014

**TENTATIVE AGENDA
for the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**July 31, 2014
University of New Mexico Cancer Center
Albuquerque, New Mexico**

Thursday, July 31

- 9:30 a.m. **Welcome and Introductions**
—Senator Cisco McSorley, Co-Chair
—Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:35 a.m. (1) **Welcome and Update on Genomics/Biocomputing/Specialty Education
in Trauma/Specialty Education in Pediatrics/University of New Mexico
(UNM) School of Medicine Instruction and General Purposes**
—Dr. Richard Larson, Executive Vice Chancellor and Vice Chancellor for
Research, UNM Health Sciences Center
- 10:20 a.m. (2) **UNM Cancer Center Update**
—Dr. Cheryl Willman, Director and Chief Executive Officer, UNM
Cancer Center
- 10:45 a.m. (3) **Tobacco Settlement Revenue: Funding History and Evidence-Based
Outcomes for Human Services Department, Department of Health and
Indian Affairs Department programs**
—Ruby Ann Esquibel, Principal Analyst, Legislative Finance Committee
(LFC)
—Christine Boerner, Senior Fiscal Analyst, LFC
- 12:15 p.m. **Lunch**
- 1:15 p.m. (4) **Update on the Master Settlement Agreement Arbitration**
—Scott Fuqua, Director, Litigation Division, Office of the Attorney General
- 2:15 p.m. (5) **New Mexico Poison and Drug Information Center Update**
—Dr. Lynda S. Welage, Dean, College of Pharmacy, UNM
—Dr. Stephanie Harvey, Interim Director, New Mexico Poison and Drug
Information Center, College of Pharmacy, UNM

- 2:45 p.m. (6) [Pediatric Oncology Update](#)
—Dr. John Kuttesch, Division Chief, Pediatric Hematology/Oncology,
UNM Children's Hospital
- 3:15 p.m. **Approval of Minutes from the June 2014 Meeting**
- 3:20 p.m. **Public Comment**
- 3:45 p.m. **Adjourn**

Revised: September 18, 2014

**TENTATIVE AGENDA
for the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**September 22, 2014
Pueblo of Laguna Administration Building
22 Capital Drive
Laguna, New Mexico**

Monday, September 22

- 9:30 a.m. **Introductions and Call to Order**
 —Senator Cisco McSorley, Co-Chair
 —Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:35 a.m. **Welcoming Remarks**
 —Paul Pino, First Fiscale, Pueblo of Laguna
- 9:45 a.m. (1) **Science and Health Effects of E-Cigarettes**
 —Dona Upson, M.D., Division of Pulmonary, Critical Care and Sleep
 Medicine, Department of Internal Medicine, University of New Mexico;
 Tobacco Dependence Specialist, New Mexico Veterans' Administration
 Health Care System
- 10:30 a.m. (2) **Overview of Tobacco Cessation Programs Funded Through the Indian
Affairs Department (IAD)**
 —Michelle Redmond, Director of Government Affairs, IAD
 —Allie Moore, Keres Consulting
- 11:30 a.m. (3) **E-Cigarettes: Survey of Policy and Legislative Action in Other States**
 —Ari Biernoff, Assistant Attorney General, Litigation Division, Office of
 the Attorney General
- Action Item: Approval of Minutes from July 2014 Meeting*
- 12:20 p.m. **Public Comment**
- 12:30 p.m. **Adjourn**

Revised: October 9, 2014

**TENTATIVE AGENDA
for the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 14, 2014
Room 321, State Capitol
Santa Fe**

Tuesday, October 14

- 9:30 a.m. **Welcome and Introductions**
 —Senator Cisco McSorley, Co-Chair
 —Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:35 a.m. (1) **Taxation of E-Cigarettes (Presentation via Skype)**
 —Karmen Hanson, Program Manager, Health Policy, National Conference
 of State Legislatures
- 10:15 a.m. (2) **Update on the Tobacco Use Prevention and Control (TUPAC) Program**
 —Benjamin Jacquez, Program Manager, Department of Health (DOH),
 TUPAC Program
- 11:15 a.m. (3) **Update on DOH Programs**
 —Judith Gabriele, Program Manager, DOH, Diabetes Prevention and
 Control Program
 —Gena Love, Program Manager, DOH, Breast and Cervical Cancer
 Screening Program
 —Andrew Gans, Manager, DOH, HIV Prevention Program
- 12:15 p.m. (4) **E-Cigarettes and Harm Reduction (Working Lunch)**
 —Dr. Joel Nitzkin, Senior Fellow in Tobacco Policy, R Street Institute
- 1:15 p.m. (5) **Public Comment Period #1**
- 1:30 p.m. (6) **Summary of Findings of the Tobacco Use and Employer Costs Task
Force**
 —Heather Balas, President and Executive Director, New Mexico First
- Action Item: Approval of Minutes*
- 2:00 p.m. (7) **Public Comment Period #2**
- 2:15 p.m. **Adjourn**

Revised: November 5, 2014

**TENTATIVE AGENDA
for the
FIFTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 6, 2014
State Capitol, Room 321
Santa Fe**

Thursday, November 6

- 9:00 a.m. **Welcome and Introductions**
 —Senator Cisco McSorley, Co-Chair
 —Representative Elizabeth "Liz" Thomson, Co-Chair
- 9:15 a.m. (1) **Tobacco Settlement Permanent Fund Asset Allocation**
 —Steve Moise, State Investment Officer, State Investment Council (SIC)
 —Vince Smith, Deputy State Investment Officer, SIC
- 10:15 a.m. (2) **Tobacco Settlement Permanent and Program Funds; Revenue Projections**
 —Peter B. van Moorsel, Chief Economist, Legislative Finance Committee (LFC)
 —Christine Boerner, Senior Fiscal Analyst, LFC
- 10:45 a.m. (3) **Proposed Legislation for Committee Endorsement**
 —Caela Baker, Staff Attorney, Legislative Council Service
- 11:30 a.m. **Public Comment**
- 11:45 a.m. (4) **Review of Fiscal Year (FY) 2015 Program Funding Levels and FY 2016 Funding Recommendations**
- Action Item: Approval of Minutes*
- 12:15 p.m. **Adjourn**

COMMITTEE MINUTES

**MINUTES
of the
FIRST MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**June 18, 2014
Room 321, State Capitol**

The first meeting of the Tobacco Settlement Revenue Oversight Committee for the 2014 interim was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on June 18, 2014 at 9:43 a.m. in Room 321 of the State Capitol.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Sen. John C. Ryan
Rep. Monica Youngblood

Absent

Rep. Gail Chasey
Sen. John Arthur Smith

Advisory Members

Rep. Kelly K. Fajardo
Sen. Linda M. Lopez
Rep. Jim R. Trujillo

Rep. Paul C. Bandy
Sen. Mary Kay Papen

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Randy Taylor, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Wednesday, June 18

Representative Thomson called the meeting to order and welcomed those in attendance. Committee members and staff then introduced themselves.

History of the Master Settlement Agreement in New Mexico

Sandra Adondakis, New Mexico government relations director of the American Cancer Society Cancer Action Network, began by introducing herself and explaining her organization's goal, which is to raise tobacco control funding in New Mexico to levels recommended by the Centers for Disease Control and Prevention (CDC). Ms. Adondakis explained that the CDC recommends that New Mexico spends \$16 million a year on tobacco control programs. She

explained that tobacco control programs save the state money in the long run through reduced health care costs.

Ms. Adondakis emphasized that tobacco use prevention programs are effective and have successfully reduced smoking rates; however, she explained that insufficiently funded programs are less effective. Ms. Adondakis used Florida's "Truth" campaign as an example. The campaign successfully lowered youth tobacco use and spawned a national anti-smoking campaign. Conversely, in Ohio — a state that cut its prevention programs in 2009 — youth and adult smoking rates have risen.

Ms. Adondakis then turned to tobacco use in New Mexico. According to the Behavioral Risk Factor Surveillance System, the adult-use-of-tobacco rate rose from 2009 to 2011 in New Mexico and then fell in 2012. New Mexico's adult-use-of-tobacco rate is about the national average, Ms. Adondakis stated. She further stated that New Mexicans in the highest percentage category of tobacco use have an average household income of less than \$15,000, while those in the second-highest category of tobacco use have average incomes between \$15,000 and \$24,000. Ms. Adondakis stated that the Master Settlement Agreement (MSA) requires that the participating manufacturers release internal documents, including advertising and marketing documents. Those documents reveal that the participating manufacturers specifically target those living in poverty. Ms. Adondakis sees this as evidence that the "easy" quitters have already stopped using tobacco and that preventing tobacco use in lower income brackets will be more difficult as time goes on.

Ms. Adondakis then compared tobacco-related spending in New Mexico with projected revenues. Overall, smoking-related costs in New Mexico total \$954 million — \$461 million in medical costs and \$493 million in lost productivity. Estimated tobacco tax revenue is \$95 million for fiscal year (FY) 2014, and the projected tobacco settlement revenue is \$25.8 million. New Mexico's smoking-related Medicaid costs total \$56.6 million, while the CDC-recommended level of spending for tobacco control is only \$16 million.

Ms. Adondakis next described changes in Medicaid coverage under the federal Patient Protection and Affordable Care Act (ACA). Medicaid now offers comprehensive smoking cessation benefits, including medications for smoking cessation and cessation counseling. There is no prior authorization required to obtain these cessation benefits. The ACA further requires that these benefits be offered at no cost to employees.

Ms. Adondakis concluded this part of her presentation by recommending that New Mexico restore tobacco control program funding in order to realize savings in tobacco-related health costs and that New Mexico return to retaining 50 percent of MSA payments in the Tobacco Settlement Permanent Fund.

Federal Food and Drug Administration Proposed "Deeming" Rules

Ms. Adondakis next provided an overview of the newly proposed federal Food and Drug Administration's (FDA's) "deeming" rules for tobacco products. The FDA's proposed rules would bring non-cigarette tobacco products under its authority, including dissolvable tobacco products, gels, hookah tobacco, electronic cigarettes, cigars and pipe tobacco. Three additional

provisions would apply to newly deemed tobacco products: sales to persons under the age of 18 would be prohibited; sales would be prohibited in vending machines in buildings where minors are allowed to enter; and new requirements for warning statements would go into effect. Ms. Adondakis emphasized that although the new deeming rules would subject other tobacco products to some of the same rules as cigarettes, the proposed rules do not regulate the marketing, advertising or flavoring of newly deemed tobacco products. Ms. Adondakis explained that the proposed rules are still in a 75-day public comment period, after which the FDA will review the comments, amend the rules as it sees fit and then gradually phase in the new rules.

Committee members requested public comment on Ms. Adondakis' presentation, but no comments were offered.

Post-Session Update on the Tobacco Settlement Permanent and Program Funds

Peter van Moorsel, chief economist at the Legislative Finance Committee (LFC), briefed the committee on the status of the Tobacco Settlement Permanent Fund (Permanent Fund) and the Tobacco Settlement Program Fund (Program Fund). Mr. van Moorsel explained that the projected revenue estimate was \$39.5 million, all of which was appropriated in the General Appropriation Act of 2013 (GAA): 50 percent to state agencies for tobacco cessation and other programs; 25 percent to the Lottery Tuition Fund; and 25 percent to early childhood care and education programs. However, tobacco settlement revenues were reduced to \$21 million in FY 2014 due to an adverse arbitration decision.

Mr. van Moorsel then reviewed legislative efforts to account for the arbitration settlement against New Mexico. First, the GAA contains language providing that any shortfall of the \$19.3 million appropriated to the Program Fund would be supplemented by more funds from the Permanent Fund. Second, the GAA contains language that transfers the 25 percent appropriation to the Lottery Tuition Fund back to the Permanent Fund, but this provision was vetoed. Finally, in the event of a shortfall, the appropriation to early childhood education would be replaced by funds from the federal Temporary Assistance for Needy Families program.

Mr. van Moorsel explained that there are a number of uncertainties governing future revenue. First, Mr. van Moorsel identified language in Senate Bill 313 from the 2014 session that is ambiguous. Second, Mr. van Moorsel pointed out that investments may be an upside risk in the future; the State Investment Council (SIC) projected a return average of 7.5 percent, but FY 2014 first quarter through third quarter earnings have averaged 14.2 percent. Finally, participating manufacturers under the MSA have challenged New Mexico's enforcement of the MSA every year since 2003. Given these challenges, it is uncertain whether or when there will be future arbitration rulings and penalties.

Committee members then questioned Mr. van Moorsel and David Abbey, director of the LFC, on the following topics.

- Although the legislature planned to repay the appropriation to the Lottery Tuition Fund from the Permanent Fund, the appropriation of \$5.275 million is still in the Lottery Tuition Fund because the governor vetoed the repayment.

- Any plan to gradually repay the Permanent Fund would require legislative action; however, there are conflicting opinions regarding whether to spend or save the money.
- The general fund operating reserve includes the Permanent Fund, so a potential conflict could occur if the Permanent Fund investments are made by the SIC. The general fund operating reserve is needed to cover budget shortfalls and emergency appropriations, so it may not be wise to invest the Permanent Fund in assets that are not easy to liquidate.
- A committee member questioned whether the estimate of \$56.6 million in smoking-related health care costs sounds plausible. Mr. van Moorsel and Mr. Abbey agreed that the figure is roughly five percent to six percent of the state's Medicaid spending, so the number is plausible.
- Measuring the efficacy of a smoking cessation program would require studying how much the program actually affected usage rates. For the most part, New Mexico appears to track with the national average in adult tobacco usage rates.
- Questions were raised as to whether there have been efforts to track the efficacy of the roughly \$6 million already used for tobacco control programs; whether there is a threshold spending amount that control programs must spend in order to see results; and whether the Indian Affairs Department (IAD) tobacco control program has been effective.
- Committee members discussed the necessity of growing the Permanent Fund and how that might happen. Ideas included transferring money from the general fund; slowly reducing Medicaid spending and reinvesting it in tobacco control programs; and saving further investment earnings.
- Committee members discussed the possibility that the Medicaid expansion under the ACA and the addition of tobacco cessation programs may combine to reduce tobacco-related spending by the state.
- Committee members raised concerns regarding the regressive nature of excise taxes on cigarettes. A committee member was particularly concerned with the prospect of taxing electronic cigarettes, which may discourage their use as a smoking cessation tool. Another committee member responded that research has not indicated that electronic cigarettes are effective as a smoking cessation tool.

The committee again requested public comment, but no comments were offered.

Review of 2014 Legislation

Shawn Mathis, staff attorney, LCS, provided an overview of legislation from the 2014 session that pertained to tobacco products. House Bill 15 would have prohibited the sale of electronic cigarettes to minors. Senate Bill 232 would have prohibited the use and possession of electronic cigarettes by minors and would also have prohibited the sale of electronic cigarettes to minors. Both bills failed to pass in the 2014 legislative session. Ms. Mathis explained that the differences between the bills were in how they defined "electronic cigarette", "tobacco product", and "tobacco-containing product". The committee then questioned Ms. Mathis on the following topics.

- Ms. Mathis did not recommend reintroducing either bill "as is" in light of the FDA's proposed new deeming rules.
- Although the FDA has its own regulations concerning tobacco products, states are free to regulate tobacco products more stringently if they so desire.
- A committee member expressed the opinion that if members are concerned with minors possessing electronic cigarettes, the simple solution is to ban the sale of electronic cigarettes to minors, not to tax electronic cigarettes as a deterrent to their use.
- Questions were raised concerning how to take action in accordance with FDA regulations that are not yet final and are subject to change. Ms. Mathis answered that the LCS would need to carefully study the proposed FDA rules as well as other state statutes in order to draft legislation that accomplishes the committee's goals while also giving leeway for later amendment.
- Ms. Mathis mentioned that "tobacco products" are subject to taxation in New Mexico, but electronic cigarettes are not "tobacco products" for the purpose of taxation.

The committee then paused for public comment. Ms. Adondakis raised the point that statutes often have different definitions for the same word, so it should be possible for multiple definitions of "tobacco products" to exist in statutes.

Review and Adoption of Interim 2014 Work Plan and Meeting Schedule

Ms. Baker presented the proposed work plan and meeting schedule to the committee and then asked for revisions or additions.

Committee members expressed an interest in obtaining testimony from experts concerning different approaches to defining the terms "electronic cigarette" and "tobacco product" and whether nicotine may be derived from non-tobacco plants, which would complicate the definitions. Scott Scanland, lobbyist for New Mexico Government Affairs, directed the committee's attention to the web site www.greensmartliving.com, which is the web site for a company that markets electronic cigarettes with a nicotine component that is not derived from tobacco plants.

The committee expressed an interest in the scope of the Medicaid expansion and the tobacco cessation programs now offered under Medicaid. The committee also requested a presentation on the findings and recommendations of the Tobacco Use and Employer Costs Task Force, as well as a presentation concerning potential application of the Dee Johnson Clean Indoor Air Act to electronic cigarettes. Finally, the committee decided to change one of its meetings from Albuquerque to the Pueblo of Laguna in order to examine the progress of tobacco cessation programs that are funded through the IAD using tobacco settlement revenues. Upon a motion of Representative Youngblood, seconded by Senator McSorley, the committee voted unanimously to adopt the work plan and meeting schedule, as amended.

Adjournment

There being no further business before the committee, the committee adjourned at 12:43 p.m.

**MINUTES
of the
SECOND MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**July 31, 2014
University of New Mexico (UNM) Cancer Center
Albuquerque**

The second meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) for the 2014 interim was called to order by Senator Cisco McSorley, co-chair, on July 31, 2014 at 9:40 a.m. at the UNM Cancer Center in Albuquerque.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Gail Chasey
Sen. John Arthur Smith
Rep. Monica Youngblood

Absent

Sen. John C. Ryan

Advisory Members

Rep. Kelly K. Fajardo
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Rep. Paul C. Bandy

Staff

Caela Baker, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Randy Taylor, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Thursday, July 31

Welcome and Update on the UNM Health Sciences Center

Dr. Richard Larson, executive vice chancellor and vice chancellor for research, UNM Health Sciences Center (HSC), introduced himself and welcomed the committee to the HSC. Dr. Larson stated that he would give an overview of the HSC and tobacco settlement funding's use at the HSC and request that funding levels from the tobacco settlement to the HSC be maintained.

First, Dr. Larson explained the difference between a health care provider, a university and an academic health care provider like the HSC. Academic health care providers, Dr. Larson said, must compete in the market with other health care providers but have a unique role in educating future health care workers, conducting research and providing state-of-the-art care. Thus, the HSC must operate as both a research university and a health care provider.

Dr. Larson then discussed how tobacco settlement funding is used at the HSC. Tobacco settlement funding was designed to support the care, education and research of tobacco-related illnesses, support biomedical research and fund other health-related programs. Tobacco-related illnesses have a large scope, according to Dr. Larson, including cancers, infectious diseases and vascular diseases.

Dr. Larson explained that tobacco settlement funding directly supports the New Mexico Poison and Drug Information Center (NMPDIC), the UNM pediatric oncology program and biomedical research at the HSC. The NMPDIC is New Mexico's only poison center, and it works primarily to reduce mortality and morbidity associated with poisonings and to save on health care costs by preventing unnecessary hospital visits. Tobacco settlement funding supports faculty positions and provides counseling support to patients and families at UNM's pediatric oncology program.

Dr. Larson then gave an overview of the services and benefits that HSC biomedical research provides and their impacts on health care and the economy. Biomedical research has three components: (1) core facilities; (2) clinical trials; and (3) pilot funding. Core facilities allow multiple researchers to use the same facilities, reducing infrastructure costs for the HSC. Clinical trials allow the HSC to treat patients with cutting-edge technology. Pilot funding is designed to fund researchers' costs for obtaining initial data, after which they can secure outside funding. Dr. Larson testified that the HSC leverages \$1.00 of pilot funding into \$8.00 to \$20.00 of outside funding, depending on the year.

In addition to pilot funding, Dr. Larson stated, the HSC is able to generate \$7.00 of economic impact for every \$1.00 invested in the HSC. As a result of tobacco settlement funding to the HSC, 55 full-time jobs have been created and there is an indirect economic impact of \$5.12 million per year. Dr. Larson told the committee that tobacco settlement funding is critical to the HSC's mission, and given that importance, Dr. Larson asked that the HSC continue to receive its current level of funding from the tobacco settlement and that the committee focus on growing the Tobacco Settlement Permanent Fund.

The committee then discussed a number of issues with Dr. Larson. During that discussion, Dr. Larson stated that UNM receives licensing fees from technologies developed from pilot funding. He also stated that most health sciences centers throughout the country are focusing on developing core facilities in order to maximize use of funds.

Dr. Larson stated that the HSC is a biosafety level 3 facility, which means it is certified by the federal government to handle and research certain dangerous biological agents. In particular, the HSC is a leading center on tuberculosis vaccination programs. When asked if the HSC has "enough" funding, Dr. Larson explained that the HSC goes into each fiscal year (FY)

expecting to lose at least 25% of grant funding, meaning that it must make up that funding and attract additional funding on top of that. Dr. Larson stated that 100% of funds the HSC receives from the tobacco settlement go toward researching tobacco-related illnesses, but the HSC could spend nine figures or more on tobacco-related illnesses, depending on how broadly "tobacco-related" is defined. Finally, Dr. Larson told the committee that discoveries leading to new pharmaceuticals are increasingly being made in universities, but the pharmaceutical industry is currently lobbying for regulation that would restrict pharmaceutical research in institutions like the HSC.

Approval of Minutes

The committee voted unanimously to approve the minutes from the June 2014 meeting.

UNM Cancer Center Update

Dr. Cheryl Willman, director and chief executive officer, UNM Cancer Center, welcomed the committee to the UNM Cancer Center. Dr. Willman stated the center's mission is to improve and provide access to state-of-the-art cancer treatments statewide. She said that 55% of the center's patients are from the four counties surrounding Albuquerque, while 45% come from the rest of the state. Dr. Willman stated that about 18% of the center's patients are uninsured, leading to \$6.8 million in unreimbursed care.

Dr. Willman next described the center's funding. The center receives \$6 million from the state, mostly derived from cigarette excise tax revenues. In addition to state funding, the center is a National Cancer Institute (NCI)-designated cancer center, which qualifies the center for federal funds from the NCI.

Dr. Willman proceeded to brief the committee on the center's goals and how it is completing them. Dr. Willman emphasized the center's efforts to improve access throughout the state, saying the center works through the Research Involving Outpatient Settings Network and Project ECHO (Extension for Community Healthcare Outcomes) to reach rural populations and provide them with effective cancer treatments. Additionally, the center has Hispanic, Native American and rural outreach programs to treat other underserved populations.

Dr. Willman then explained some of the center's current activities. She said that one of the center's initiatives is operating and maintaining a statewide tumor registry that was founded by the state. Dr. Willman stated that different ethnicities develop different kinds of cancer and respond to treatments differently, so working with the registry and applying genome research are helping the center respond to and treat patients better.

Dr. Willman also stated that the center is one of the state's only cancer treatment centers that provides comprehensive cancer treatment through diagnosis, treatment, surgery and follow-up therapy. Dr. Willman told the committee that the New Mexico Cancer Care Alliance has 88 oncologists operating outside of Albuquerque, and the center recently received a federal grant to further the alliance's goals. The center is also exploring a partnership with the new Texas Tech University Health Sciences Center in El Paso, Texas.

Dr. Willman concluded her presentation by describing the roles of lead staff on a number of the center's projects and outlining the center's future goals. Moving forward, the center is looking to expand its facilities, continue recruiting high-quality physicians and researchers and renew its NCI cancer center designation.

After Dr. Willman's presentation, she mentioned that a number of new staff members have been recruited away from other top research centers. She was asked by committee members how the UNM Cancer Center manages to recruit so well. Dr. Willman responded that the center affords researchers an opportunity to lead their own projects and immediately help patients. The committee commended Dr. Willman on her success in growing the UNM Cancer Center and her ability to work above and beyond what the state alone can finance.

Tobacco Settlement Revenue: Funding History and Evidence-Based Outcomes for Tobacco Cessation and Prevention Programs

Ruby Ann Esquibel, principal analyst, Legislative Finance Committee (LFC), and Christine Boerner, senior fiscal analyst, LFC, presented information to the committee regarding programs for tobacco use and prevention funded by the Department of Health (DOH) and Indian Affairs Department (IAD). Ms. Esquibel and Ms. Boerner began their presentation with a number of statistics regarding tobacco use in New Mexico. New Mexico has a slightly higher-than-average adult tobacco-use rate, and more of New Mexico's poor residents use tobacco than other socioeconomic populations.

Next, Ms. Esquibel and Ms. Boerner outlined federal and state actions taken to reduce tobacco use. The federal Patient Protection and Affordable Care Act (ACA) requires that most private health insurance plans cover tobacco-cessation programs with no cost-sharing, but states have discretion over which cessation treatments are covered. Seven states cover individual counseling, group counseling and all seven federal Food and Drug Administration-approved cessation medications. Massachusetts has had a particularly successful program, reducing smoking by 10% in two years.

To calculate total tobacco control funding in New Mexico, Ms. Esquibel and Ms. Boerner added annual appropriations to the IAD and the DOH and estimated Medicaid spending on tobacco control. The IAD and DOH combined receive just under \$6 million for tobacco control, and Medicaid is estimated to spend about \$8 million based on cost and use estimates. The federal Centers for Disease Control and Prevention (CDC) recommends that New Mexico spend \$16 million on tobacco-control programs.

Ali Moore, project manager for Keres Consulting, Inc., which manages tobacco-control programs for the IAD, spoke about the IAD's tobacco-control programs. Ms. Moore stated that there are nine grants for tobacco-control programs in FY 2015, amounting to \$400,000. Moving forward, the IAD is looking to integrate with tribal tax departments to jointly affect smoking rates. Ms. Moore stressed that each grant has in-kind matches from the tribes, nations and pueblos and that, in general, programs are trying to integrate cultural values to discourage smoking.

Regarding the DOH, Ms. Esquibel and Ms. Boerner directed the committee's attention to their second handout, which contains information on the numerous contracts the DOH maintains for tobacco-control programs. Of the \$7 million the DOH receives from tobacco settlement funds, \$5.6 million goes to tobacco control and prevention. Data on DOH program outcomes are varied: some programs are successful, some programs are not and some programs lack enough data to draw conclusions. Moving forward, Ms. Esquibel and Ms. Boerner recommended reducing the number of contracts, reducing built-in administrative costs and providing more uniform reporting on outcomes.

Upon questioning from committee members, James Padilla, epidemiologist, Tobacco Use Prevention and Control (TUPAC) program, DOH, and Benjamin Jacquez, manager, TUPAC program, DOH, told the committee that the DOH has three years of evaluations for its contracts, which are procured through a competitive request for proposals process, and they may bring this information to a later committee meeting. In addition, it was clarified that the ACA requires certain tobacco-cessation coverage but that states may define for themselves what is included in tobacco-cessation coverage.

Committee members asked about the effectiveness of tobacco control programs funded through the DOH. A member of the committee stated that no further money needed to be spent on tobacco-cessation programs. Members of the committee stated that the facts presented did not warrant reducing funds to tobacco-cessation programs. Some members indicated that although attainment of the CDC-recommended level of spending has been achieved, state management of the relevant funds should continue to improve. Questions were also raised about whether the state may rely solely on Medicaid-funded tobacco-control programs because not all smokers qualify for Medicaid, meaning Medicaid funds spent statewide would not technically be spent on Medicaid programs.

Some committee members pointed out that youth smoking rates are much higher than in the general population, so control programs should focus on youth.

NMPDIC Update

Dr. Lynda S. Welage, dean, College of Pharmacy, UNM, and Dr. Stephanie Harvey, interim director, NMPDIC, College of Pharmacy, UNM, next presented to the committee how tobacco settlement revenues fund the NMPDIC. According to Drs. Welage and Harvey, poisoning is the second-highest cause of unintentional death in the United States and costs associated with poisonings are roughly \$4.4 billion.

Drs. Welage and Harvey stated that the NMPDIC receives 28,000 calls from individuals and providers a year, and the center's primary mission is to reduce the mortality and morbidity associated with poisonings, adverse drug interactions and medication errors. According to metrics designed by the American Association of Poison Control Centers, 91% of counties in New Mexico have acceptable utilization rates of the NMPDIC.

Drs. Welage and Harvey next explained how the NMPDIC saves the state money on health care spending. When the first call regarding a potential poisoning comes from a home, the NMPDIC is able to determine whether it is safe not to go to the emergency room 90% of the

time. This prevents unnecessary emergency room visits, translating into \$17 million in health care savings. Further, Drs. Welage and Harvey stated, health care providers throughout the state call and consult the NMPDIC regarding patients who have already been admitted. These consultations reduce the average hospital stay by three days, amounting to \$26 million in savings.

Drs. Welage and Harvey then went over the NMPDIC's funding and expenses. Tobacco settlement funds constitute nearly 25% of the NMPDIC's budget, and nearly 90% of the budget goes toward staffing the NMPDIC. Given the statistics measured by the NMPDIC, tobacco settlement funding directly supports responses to 7,000 callers and outreach to 630,000 New Mexicans and reduces health care spending by \$10.75 million.

At this point, the committee engaged in a general discussion. During that discussion, Drs. Welage and Harvey clarified that all calls from throughout the state go to the NMPDIC in Albuquerque, where they are answered by trained pharmacists. The NMPDIC answers calls for overdoses, insect bites, snake bites, double-dosing of medicine and any adverse reactions to the skin, eyes and ears.

Upon questioning by committee members, Dr. Harvey said that the NMPDIC has not had many calls regarding ingestion of e-cigarette fluid. Instead, the NMPDIC has received calls because of designer drugs that are ingested by using e-cigarette devices.

Utilization rates are based on the number of calls received and the expected number of calls that would be received per capita. Dr. Welage additionally stated that the national trend is that fewer calls are being made to poison centers, but the calls involve more complicated poisonings.

After committee members inquired about the NMPDIC's technological capacity, Drs. Welage and Harvey stated that only 1.4% of calls to the NMPDIC are dropped; the NMPDIC can add 911 operators to its calls; and 911 can discern caller location after being added to the call.

Upon questioning from committee members, Drs. Welage and Harvey indicated that the NMPDIC's biggest need is funding to keep the NMPDIC operating 24 hours a day, seven days a week, but salaries for its pharmacists are lower than the market average.

Update on Master Settlement Agreement (MSA) Arbitration

Scott Fuqua, assistant attorney general, Attorney General's Office (AGO), discussed the current state of the arbitration between New Mexico and the participating manufacturers to the MSA. New Mexico has, in a sense, "appealed" the arbitration finding that New Mexico was noncompliant with the MSA in 2003. The AGO has filed two motions challenging the arbitration finding: one to challenge the finding of noncompliance, and one to challenge the calculation of the penalty assessed to New Mexico. The MSA court in Santa Fe has heard oral arguments on the two motions, and decisions should be forthcoming soon.

Regarding future penalties, Mr. Fuqua explained there are a number of factors that could contribute to whether future penalties are assessed and how much they will be. If future penalties are assessed, they will be deducted from future payments; New Mexico will not have to "pay back" the penalty amount. Further, penalties may not be withheld until final judgment, though the participating manufacturers have withheld payment already. Mr. Fuqua stated that the \$17 million penalty assessed for 2003 may be the high-water mark for penalties against New Mexico. Finally, Mr. Fuqua stated that arbitration for 2004 has not begun yet, and if it does take place, it may be on a state-by-state basis, rather than one arbitration for every state, as it was for 2003.

Pediatric Oncology Update

Dr. John F. Kuttesch, Jr., Ph.D., M.D., chief, Division of Pediatric Hematology/Oncology, UNM Children's Hospital, next made a presentation to the committee on the pediatric hematology/oncology program at UNM Children's Hospital. Dr. Kuttesch began with some general facts about childhood cancer in the United States. More than 12,400 children and adolescents are diagnosed with cancer every year, and one in 500 young adults is a childhood cancer survivor. According to Dr. Kuttesch, childhood cancer has broad, lasting medical and psychosocial impacts on both the patient and the family.

Dr. Kuttesch provided an overview of the work of the pediatric oncology/hematology unit at UNM Children's Hospital. The unit's mission is to decrease the burden of childhood cancer for New Mexico children and families through clinical service, research and education and outreach. UNM Children's Hospital is the only tertiary care provider of oncology services for infants, children and adolescents in New Mexico. The pediatric hematology/oncology unit provides comprehensive treatment planning, care and clinical programs, including follow-up treatment, and counseling.

Dr. Kuttesch next described ongoing research in the pediatric hematology/oncology unit. Over 90% of eligible patients are enrolled in NCI-approved therapeutic trials conducted by nationally recognized researchers. The unit also conducts comprehensive clinical trials, including therapeutic trials and biological, epidemiological and pharmacological studies.

Dr. Kuttesch then detailed some of the unit's extensive education and outreach initiatives. The pediatric hematology/oncology unit has clinical rotations with 16 student residents, hosts student lectures and frequently hosts professional presentations and community outreach events. The unit also has a number of outreach and survivor programs, including the Young Enduring Survivors Clinic, camps and retreats for child survivors and outreach programs to communities, hospitals and schools.

Dr. Kuttesch next directed the committee's attention to a budget chart. He stated that tobacco settlement funds constitute 9% of the pediatric hematology/oncology unit's budget, which helps support the unit's mission to provide the best care to children in New Mexico.

In a discussion with committee members, Dr. Kuttesch raised the possibility of including stem cell research in the bone marrow transplant program. He indicated that this would not

occur until the UNM Cancer Center has further developed the stem cell research program on its own, given that it is a significant investment that UNM Children's Hospital cannot afford alone.

Upon questions from committee members, Dr. Kuttesch indicated that although there has been an increase in diagnoses of pediatric cancers, studies of national registries have not been able to identify environmental factors.

Dr. Kuttesch additionally stated that the pediatric hematology/oncology unit's budget is roughly 60% of what it was in 2007. Investment in hospital infrastructure is down, and there are 3.8 full-time employees caring for patients. Dr. Kuttesch stated that the patient base has not decreased much, but the hospital does know of patients going to Lubbock or El Paso instead of traveling to Albuquerque.

Public Comment

Barbara L. McAneny, M.D., board of trustees, American Medical Association, and chief executive officer, New Mexico Cancer Center, spoke to the committee regarding disposition of tobacco settlement funds and concern over e-cigarettes. Dr. McAneny expressed that the most important part of tobacco settlement spending is in prevention, particularly preventing children from starting to smoke. Dr. McAneny stated that while others may invest in research and treatment, the state is typically the only entity spending money on prevention.

Regarding e-cigarettes, Dr. McAneny stated that the success of clean indoor-air laws is that they make smoking socially unacceptable; e-cigarettes' exemption from clean indoor-air laws is dangerous because it may make smoking "cool" again. Dr. McAneny reiterated that the committee should focus efforts and spending on prevention programs, including for e-cigarettes, to improve long-term wellness and reduce long-term costs.

Anna Otero Hatanaka, executive director, Association of Developmental Disabilities Community Providers, spoke to the committee about funding for the Family Infant Toddler program, an education and outreach initiative that teaches families about their child's developmental disability and how best to work with the child.

Adjournment

There being no further business before the committee, the TSROC adjourned at 2:40 p.m.

**MINUTES
of the
THIRD MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**September 22, 2014
Pueblo of Laguna Administration Building
22 Capital Drive
Laguna, New Mexico**

The third meeting of the Tobacco Settlement Revenue Oversight Committee was called to order by Senator Cisco McSorley, co-chair, on September 22, 2014 at 9:30 a.m. at the Pueblo of Laguna Administration Building in Laguna.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Gail Chasey
Sen. John C. Ryan
Sen. John Arthur Smith
Rep. Monica Youngblood

Absent

Advisory Members

Rep. Paul C. Bandy
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Rep. Kelly K. Fajardo

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Copies of all handouts are in the meeting file.

Monday, September 22

Welcoming Remarks

Paul Pino, first fiscale, Pueblo of Laguna, welcomed the committee to the Pueblo of Laguna. Mr. Pino spoke about concerns about the adverse health effects of smoking when young tribal members use commercial tobacco. He noted, however, that sometimes smoking plays an important role to members of the Pueblo of Laguna, especially with respect to religious

ceremonies. In response to a question from a committee member, Mr. Pino indicated that native-grown tobacco does not contain pesticides or chemicals. He also indicated that native-grown tobacco burns differently than commercial tobacco.

Science and Health Effects of E-Cigarettes

Donna Upson, M.D., Division of Pulmonary, Critical Care and Sleep Medicine, Department of Internal Medicine, University of New Mexico, made a presentation regarding the potential harms and benefits of electronic cigarettes. Dr. Upson also acts as a tobacco dependence specialist for the New Mexico Veterans' Administration health care system.

Dr. Upson began her presentation with a description of electronic cigarettes. She noted that electronic cigarettes are battery-operated products that turn nicotine, flavor and other chemicals into inhalable aerosols. Dr. Upson distinguished nicotine inhalers from electronic cigarettes, noting that nicotine inhalers deliver non-combusted aerosolized nicotine to a user's oropharyngeal mucosa and are approved and regulated by the federal Food and Drug Administration (FDA) for treatment of tobacco dependence. On the other hand, Dr. Upson noted that electronic cigarettes lack FDA oversight. She stated that users of electronic cigarettes inhale vapor into their lungs, where nicotine is absorbed. In addition, she stated that electronic cigarette nicotine cartridges are replaceable and provide nicotine for 250 puffs of vapor, equivalent to the amount of nicotine in one pack of cigarettes. Dr. Upson noted that electronic cigarettes have variable amounts of nicotine and potentially harmful toxins. She also expressed that there is some concern about the possible role of electronic cigarettes in establishing nicotine addiction in young people.

Dr. Upson indicated that while electronic cigarettes are marketed as a healthier alternative to conventional cigarettes, it is unknown whether electronic cigarettes are, in fact, safer or are otherwise effective in treating tobacco dependence. She indicated that studies conducted are characterized by small sample sizes, a lack of control groups and limited follow-up.

Dr. Upson stated that potential benefits of the role of electronic cigarettes in reducing conventional smoking could be outweighed by increases in nicotine dependence and a renewed acceptance of smoking. She stated that according to a national youth tobacco survey, 1.78 million middle and high school students nationwide have tried electronic cigarettes. Another study by the American Medical Association found that current electronic cigarette use was associated with heavier smoking among conventional smokers. It also found that for those who had used electronic cigarettes, 9.3 percent reported never smoking conventional cigarettes. The study also indicated that 76.3 percent of current electronic cigarette users were also smoking conventional cigarettes.

Dr. Upson indicated that adverse impacts with respect to brain development, birth weight, fertility, type 2 diabetes, hypertension, neurobehavioral defects, respiratory dysfunction, neuroregulation, peptic ulcers and gastrointestinal cancers are attributable to nicotine. She also stated that the FDA has detected low levels of other toxic substances in electronic cigarettes. Dr. Upson additionally discussed possible adverse effects of electronic cigarettes on lung function.

In a four-country survey of people who smoked conventional cigarettes and used electronic cigarettes, Dr. Upson said that 80 percent of the people surveyed indicated that they smoked electronic cigarettes because they considered them less harmful than combustible cigarettes. Seventy-five percent of the individuals surveyed said that they smoked electronic cigarettes to reduce their smoking of conventional cigarettes, while 85 percent used electronic cigarettes to quit smoking. Dr. Upson then discussed the results of a 24-week study of 40 individuals who smoked and were given electronic cigarettes. The study showed a 50 percent reduction in cigarette use. After a 24-week follow-up, 23 percent of the individuals quit conventional cigarettes. Finally, Dr. Upson discussed the results of a comparative study between electronic cigarettes and nicotine patches. She indicated there was a low quit rate for both electronic cigarette and nicotine patch users. She stated that electronic cigarettes and smoking have the same effects upon a human's cardiovascular system.

According to Dr. Upson, clinical trials show that electronic cigarettes contain lower levels of possible carcinogens and smaller acute lung effects than conventional cigarettes. However, she said that there is no data demonstrating the efficacy of electronic cigarettes as a tool for cessation.

Next, Dr. Upson identified other concerns regarding electronic cigarettes. She indicated that some groups have expressed concern that electronic cigarettes might perpetuate nicotine dependence among cigarette smokers and decrease incentives to stop smoking, since electronic cigarettes might be used where conventional cigarettes are not allowed. She also indicated that there is a concern that electronic cigarettes might act as a gateway to conventional cigarette use for young people. Dr. Upson presented a number of statistics regarding electronic cigarette use among middle school and high school students.

Dr. Upson discussed concerns about the role of the tobacco industry in marketing electronic cigarettes. She indicated that a number of cigarette manufacturers are manufacturing electronic cigarettes. She stated that some concerns have arisen over the marketing of electronic cigarettes to children and glamorization and social acceptance of electronic cigarette use among adults. She also expressed that since electronic cigarettes are not currently regulated by the FDA, there is little information about the favorable or unfavorable impacts of electronic cigarette use or whether electronic cigarette use, in fact, leads to conventional cigarette use.

Dr. Upson described regulations recently proposed by the FDA for electronic cigarettes. She indicated that it is anticipated that the FDA will regulate electronic cigarettes as tobacco products, rather than as tobacco dependence treatment tools. The proposed regulations would:

- prohibit sales of tobacco products to anyone under the age of 18;
- prohibit certain vending machine sales;
- require electronic cigarette manufacturers to register with the FDA and report the products they sell;
- require disclosure of electronic cigarette ingredients to the FDA;
- eliminate free sampling of tobacco products;
- require "premarket review" for new tobacco products or for products making a "modified risk or harm" claim; and

- require imposition of user fees for newly deemed products.

The rules would not prohibit advertising of electronic cigarettes or the use of flavoring in electronic cigarettes. Dr. Upson noted that there have been recommendations from medical and health associations, including the American Lung Association and the American Thoracic Society, to regulate electronic cigarettes in the same manner as conventional cigarettes. For instance, the American Heart Association has called for regulations of the marketing of electronic cigarettes to young people and has recommended a federal ban on the sale of electronic cigarettes to minors. Additionally, it recommends application of all existing rules and regulations for tobacco-related products to electronic cigarettes.

Committee members engaged in a discussion with Dr. Upson following her presentation. A committee member commented that there is some concern about the possible connection between the use of nicotine products and adverse health effects in pregnant women. Dr. Upson added that nicotine use has been linked by some studies to adverse effects on behavioral health and increased rates of obesity and diabetes among children. Committee members expressed other concerns with nicotine dependence and its possible association with electronic cigarette use and the use of flavors in electronic cigarettes. In response to a question from a committee member, Dr. Upson noted that 80 to 95 percent of people who smoke regularly start smoking by the age of 15. The rest begin smoking before the age of 25.

Committee members also asked Dr. Upson about the status of proposed FDA regulations. In response to questions from the committee, Dr. Upson noted that the public comment period for the proposed regulations has closed. She also expressed that there is some potential for advertising and marketing restrictions with respect to electronic cigarettes and state regulation of those products. Another committee member asked about any public comments made in response to the FDA's proposed regulations. Dr. Upson stated that, generally, anti-smoking groups made comments in favor of making stricter rules, but there were also thousands of individual comments in favor of electronic cigarettes. In response to a question from a committee member, Dr. Upson indicated that electronic cigarettes could, at some point, be regulated as tobacco products. Another committee member asked Dr. Upson why the FDA did not include prohibitions against electronic cigarette advertising and flavoring in its proposed rules. In response, Dr. Upson indicated that court opinions might not be favorable to such regulatory prohibitions.

In response to a question from a committee member, Dr. Upson stated that existing data on the effects of electronic cigarettes on the respiratory system have results either showing no effects or slight increases in airflow compared to tobacco cigarettes. A committee member raised a concern about the possible role of nicotine or other substances in the use of other drugs.

Committee members discussed the issue of taxation of electronic cigarettes. A committee member expressed reservations about taxing electronic cigarettes and commented that taxation of electronic cigarettes could disproportionately affect poor populations. The committee member further raised concerns about the impact of electronic cigarette use among such populations. In response to a question from another committee member, Dr. Upson stated that increased taxes could result in a reduction in smoking among young people. She said that a

10 percent increase in price generally results in a six to eight percent reduction in use. Some members expressed that tobacco cigarettes and electronic cigarettes should be taxed at comparable rates. Staff was requested to research the manner in which nicotine patches are taxed and if the New Mexico Institute of Mining and Technology still receives royalties as a result of its development of the nicotine patch. Committee members also raised the question of whether increased taxes on electronic cigarettes could lead to increased traffic of those products into the United States from other countries.

The committee discussed the possible use of electronic cigarettes as tobacco cessation devices. Committee members also discussed the physiological impacts of electronic cigarettes versus tobacco cigarettes. Dr. Upson stated that there are still concerns with the levels of nicotine in electronic cigarettes. A committee member asked about the process for extracting nicotine from tobacco, and Dr. Upson briefly described the chemical process that occurs.

Overview of Tobacco Cessation Programs Funded Through the Indian Affairs Department (IAD)

Michelle Redmond, director of government affairs, IAD, and Allie Moore, Keres Consulting, provided the committee with an overview of tobacco cessation funding programs funded through the IAD. Ms. Redmond provided an overview of the goals of the IAD in promoting cessation and prevention of commercial tobacco abuse in Native American communities and promoting cultural awareness of native traditional and ceremonial uses of tobacco. She explained that tobacco settlement funds distributed to the IAD feed a competitive grant program that provides funding for commercial tobacco prevention and cessation programs statewide. She emphasized that tobacco prevention and cessation services are implemented by community members.

Ms. Moore presented a chart showing the history of funding for tobacco cessation programs in Native American communities, including funding levels from tobacco settlement funds, IAD general funds and in-kind donations. Ms. Moore noted that the IAD hopes to increase in-kind donations to increase available funds in the grant pool. Ms. Moore added that the IAD is also seeking to expand existing sources of funding, including federal funds.

Ms. Moore stated that in fiscal year (FY) 2014, the IAD received 12 proposals for program funding totaling \$458,640. The IAD entered into seven intergovernmental agreements or professional services agreements, with funding totaling \$249,938. Ms. Moore said that the Department of Finance and Administration (DFA) mandated a 46 percent reduction in funding in December 2013. For FY 2015, the IAD received 15 proposals totaling \$606,795 in funding requests. The IAD entered into nine intergovernmental agreements or professional services agreements, with funding totaling \$268,178. Ms. Moore provided an overview of program funding recipients relative to smoking prevalence in the counties in which the programs are located. She further commented that according to a 2014 survey, youth tobacco use rates in the state are the highest among Native American populations as compared to other ethnic groups.

Ms. Moore presented a chart showing the different types of tobacco control programs for which the IAD provided funding in FY 2014. She stated that 35 percent of the funds were used for prevention; 30 percent were used for cessation; 25 percent were used for surveillance; and 10

percent were used for administration and training. Next, Ms. Moore described the objectives of several funded programs, including programs at the Pueblo of Isleta, Kewa Pueblo, Pueblo of San Ildefonso and Pueblo of Tesuque and in the Navajo Nation. Ms. Moore also discussed the impacts of the programs in their respective communities.

Finally, Ms. Moore identified a number of challenges for the tobacco cessation programs funded through the IAD. She indicated that the 46 percent reduction in funding to the program required the programs to modify their scopes of work and performance measures. She also identified challenges with the contract award process, in which there are two agreement options and three required agency approvals, which often take several months to complete. She additionally indicated that programs often face challenges resulting from personnel turnover, which requires additional training for incoming employees.

Ms. Moore indicated that for FY 2015, tobacco cessation programs are expected to use innovative approaches to accomplish their goals. According to Ms. Moore, the IAD expects to help tribes seek expanded sources of funding and to coordinate with the Indian Health Service on tobacco cessation projects. She indicated that at least nine intergovernmental agreements or professional services agreements have been awarded for FY 2015.

Committee members then discussed several specific issues with Ms. Redmond and Ms. Moore. A committee member asked why the DFA mandated a 46 percent reduction in funding for FY 2014. Ms. Moore explained that the reduction was the result of the adverse ruling against the state with respect to tobacco settlement revenues. Committee members discussed the consequences of reliance on earmarked funds for tobacco cessation projects. Another committee member asked if the IAD has collected tobacco use data by tribe. Ms. Moore indicated that such research is possible.

Committee members asked whether tobacco surveillance programs are successful among children who are 13 years old. Ms. Moore indicated that youth smoking rates are dropping. For instance, she stated that between 2009 and 2011, there was a three percent reduction in smoking rates among young people.

A committee member asked whether electronic cigarettes have been considered as tobacco cessation tools for distribution to the public. Ms. Moore responded that at some pueblos, nicotine patches have been provided through tobacco cessation and prevention programs. Another committee member commented that tobacco cessation programs could still be more successful than electronic cigarettes in reducing nicotine use.

Electronic Cigarettes: Survey of Policy and Legislative Action in Other States

Ari Biernoff, assistant attorney general, Litigation Division, Office of the Attorney General, provided the committee with an update on the FDA's proposed regulations pertaining to electronic cigarettes. He noted that the public comment with respect to the proposed regulations is now closed.

Mr. Biernoff stated that under the proposed FDA regulations, electronic cigarettes would be considered to be tobacco products and would be regulated under federal law. The regulations

would require health warnings with respect to nicotine and would impose age restrictions on the sale of electronic cigarettes. Some marketing restrictions would be placed on electronic cigarettes. For instance, distribution of free samples of electronic cigarettes would be prohibited.

Mr. Biernoff noted that a group of 40 attorneys general from throughout the country provided comments on the proposed regulations. He stated that they commented that the FDA should provide for restrictions beyond a ban on sales of electronic cigarettes to youth by regulating flavoring in electronic cigarettes. The group of attorneys general also requested more conspicuous health warnings with respect to electronic cigarettes.

According to Mr. Biernoff, about 40 states have prohibited the sale of electronic cigarettes to minors. He stated that New Mexico does not have such a prohibition. He also stated that a number of states, counties and municipalities have considered how to approach the regulation of electronic cigarettes. He noted, for instance, that some states have prohibited the use of electronic cigarettes in schools.

Mr. Biernoff indicated that about 12 states are considering taxing electronic cigarettes. Some states have proposed taxing electronic cigarettes similar to taxing tobacco cigarettes. Other states have proposed taxing electronic cigarettes at lower rates than the rates imposed for tobacco cigarettes, while others have proposed providing for tax exemptions for electronic cigarettes.

After the conclusion of Mr. Biernoff's presentation, a committee member asked whether the state could prohibit flavoring in electronic cigarettes. Mr. Biernoff responded that such a prohibition would not necessarily present a federal preemption issue, but future regulations could raise issues of federal preemption.

In response to a question from a committee member, Mr. Biernoff provided the committee with an update on the appeal of the arbitration decision affecting FY 2015 tobacco settlement revenues. He indicated that the Office of the Attorney General is awaiting a decision on its motions to vacate. He also stated that the arbitration process with respect to whether the state was diligent in its enforcement of the "Qualifying Statute" in 2004 could last at least two years. A committee member discussed the possibility of incorporation of electronic cigarettes into the definition of "tobacco" throughout existing state statutes.

Adjournment

There being no further business before the committee, the committee adjourned at 12:50 p.m.

**MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 14, 2014
Room 321, State Capitol
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on October 15, 2014 at 9:40 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Monica Youngblood

Absent

Rep. Gail Chasey
Sen. John C. Ryan
Sen. John Arthur Smith

Advisory Members

Rep. Kelly K. Fajardo
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Rep. Paul C. Bandy

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 14

Taxation of E-Cigarettes

Karmen Hanson, program manager, health policy, National Conference of State Legislatures, provided a presentation via Skype on the regulation and taxation of electronic cigarettes.

Ms. Hanson summarized existing laws in other states that provide for electronic cigarette or vapor product regulation. She stated that 41 states prohibit sales to minors. Three states, including New Jersey, North Dakota and Utah, have expanded the scope of clean indoor air laws to include restrictions on electronic cigarette and vapor product use. Two states, including

Minnesota and North Carolina, specifically tax electronic cigarettes and vapor products. Two other states require child-resistant liquid nicotine packaging. Ms. Hanson indicated that states do not generally include electronic cigarettes and vapor products within the definition of traditional, combustible cigarettes or smokeless products.

Ms. Hanson described the provisions of the federal Family Smoking Prevention and Tobacco Control Act passed in 2009. She said that the act expands the authority of the federal Food and Drug Administration (FDA) to regulate and oversee tobacco products and ingredients. The act also provides the FDA with oversight of the marketing of tobacco products and requires larger warning labels on cigarette and tobacco products packages. She stated that the act preserves the authority of state, local and tribal governments to regulate tobacco products in certain respects, but it also prohibits many state and local requirements that are different from or in addition to certain FDA requirements.

Ms. Hanson explained that the Center for Tobacco Products (CTP) is an entity established by the FDA. She indicated that the FDA has proposed regulations to provide the CTP with oversight of electronic cigarettes and other alternative tobacco and nicotine products.

Ms. Hanson next described the manner in which Minnesota and North Carolina tax electronic cigarettes and vapor products. Pursuant to the Minnesota law, an electronic cigarette is taxable. Cartridges and "e-juice" containing nicotine are also taxable. In Minnesota, reusable and refillable devices for electronic cigarettes and cartridges and e-juice without nicotine are not taxable.

Ms. Hanson stated that in North Carolina, a five-cent tax per fluid milliliter of consumable product is imposed. She indicated that the North Carolina law requires manufacturers to report the amount of consumable products sold on invoices. The tax is estimated to generate more than \$5 million in fiscal year (FY) 2015 through FY 2016. Ms. Hanson said that the North Carolina law does not apply to products regulated by the FDA.

Ms. Hanson briefly addressed the question of whether electronic cigarettes and vapor products are safer than traditional cigarettes. She indicated that there are competing opinions and research reports on the issue. She noted that the federal Centers for Disease Control and Prevention (CDC) reports that while some toxins contained in traditional cigarettes are not present in electronic cigarettes, electronic cigarettes still contain nicotine and might contain other harmful substances. Ms. Hanson stated that it is likely that there will be additional bills and laws introduced regarding regulation of electronic cigarettes, but the number of those bills might decline in light of pending federal regulations.

Update on the Tobacco Use Prevention and Control (TUPAC) Program

Benjamin Jacquez, program manager, TUPAC program, Department of Health (DOH), provided the committee with a number of statistics related to smoking in New Mexico. He stated that 2,200 New Mexicans die annually from smoking, and 42,000 New Mexicans suffer from a smoking-related disease. He explained that the TUPAC program is an evidence-based, statewide tobacco control program with the objective of reducing smoking rates and the

incidence of related diseases. He identified some specific goals of the TUPAC program. He stated that the program aims to:

- prevent young people from trying smoking;
- promote smoking cessation;
- eliminate exposure to secondhand smoke; and
- identify and eliminate tobacco-related health disparities among population groups.

According to Mr. Jacquez, the TUPAC program engages in statewide programming, community interventions, mass-reach health communication interventions, cessation interventions and surveillance and evaluation to reach its goals. He identified a number of policy initiatives supported by the TUPAC program, including clean indoor air initiatives, mass media campaigns, telephone support services, co-payment reductions and reminder systems for health care providers. He identified existing tobacco control policy initiatives in New Mexico, including enactment and implementation of the Dee Johnson Clean Indoor Air Act, tobacco products price increases, cessation treatment coverage by insurance companies, clerk-assisted tobacco sales and allocation of Master Settlement Agreement funds to tobacco prevention and control programs. Mr. Jacquez briefly discussed recent municipal ordinances addressing electronic cigarettes.

Mr. Jacquez next addressed how the TUPAC program uses its funding. He stated that for the current fiscal year, \$5.6 million of funding from the Tobacco Settlement Program Fund is used for state and community contracts, while \$1.1 million from a cooperative agreement with the CDC is used for administration and management of the TUPAC program. He stated that the TUPAC program uses CDC guidance documents to select priorities to reach targeted populations at the current funding level.

Mr. Jacquez described the process by which the TUPAC program contracts for services. He stated that the TUPAC program issues requests for proposals for media, cessation, evaluation, population-based and priority population services. Mr. Jacquez provided the committee with a list of the organizations funded through the TUPAC program. He stated that the TUPAC program oversees the contracts through monthly meetings, ongoing technical assistance and use of assigned evaluators. He added that if a contractor is not performing adequately, the contractor could be placed on probationary status, or the affected contract could be terminated. Mr. Jacquez explained that population-based outcomes are tracked using evaluation surveys to measure changes in tobacco-related knowledge, skills, attitudes, social norms, illnesses and deaths.

Mr. Jacquez described the outcomes of the QUIT NOW program. He stated that the initiative has helped smokers obtain access to cessation services and resources. He pointed out that 32 percent of enrollees that were contacted at a seven-month follow-up had quit smoking. The other 76 percent expressed an intention of quitting in the next 30 days. Mr. Jacquez reported that 94 percent of participants were satisfied with their service.

Next, Mr. Jacquez discussed the TUPAC program's efforts to train health care providers. He indicated that online training is available to all health care providers in New Mexico and that

330 new providers have been trained on tobacco screening, brief interventions and referrals to the QUIT NOW program. He further stated that 150 staff and providers for the federal Women, Infants and Children (WIC) program have been trained in New Mexico.

Mr. Jacquez stated that the TUPAC program is leveraging national media campaigns by the CDC to encourage smokers to quit and to reduce secondhand smoke exposure. He noted that multi-unit housing owners are increasingly prohibiting smoking on their properties. He also stated that the Navajo Nation passed a smoke-free resolution affecting 3,000 people in 31 of its 110 chapters.

Mr. Jacquez described the TUPAC program's efforts to prevent tobacco use among young people. He talked about the Twenty-Four-Seven initiative, which provides school tobacco policy toolkits and a "twenty-four-seven" web site to support policy efforts. Mr. Jacquez presented data on the numbers of young people trained as tobacco peer educators and participants in youth tobacco use prevention campaigns. He stated that cigarette smoking among young people dropped by 44 percent between 2005 and 2013 and that cigar smoking among the same group dropped by 42 percent. However, chewing tobacco use remained stable, and hookah tobacco use increased.

Mr. Jacquez said that adult cigarette smoking decreased from 21.5 percent in 2011 to 19.1 percent in 2013, but cigar, chewing tobacco and hookah tobacco use remained unchanged. He stated that 10 percent of adults report using vapor or electronic cigarette products. Mr. Jacquez highlighted other statistics on adult cigarette use. He stated that 36,000 fewer New Mexico adults are smoking cigarettes and that the average number of cigarettes smoked per day has dropped from 17 to 11. In 2013, 19 percent of smokers consumed a pack or more per day, compared to 45 percent of smokers 10 years earlier.

Mr. Jacquez identified a number of challenges for the TUPAC program. He said there are still 300,000 adults and 21,000 young people who smoke cigarettes, and that smoking rates are proportionately higher among certain population groups. He also indicated that there is continued exposure to secondhand smoke on tribal lands, multi-unit housing and various educational and work campuses. He also indicated that the use of hookah tobacco is high among young people, and the effects of emerging products are unknown. He also said that noncombustible tobacco products are relatively affordable.

Mr. Jacquez indicated that there are some concerns about the emergence of the use of electronic cigarettes and other vapor devices. He indicated that such products promote youth experimentation and could result in the use of multiple types of tobacco products. He also stated that there is a concern about whether electronic cigarettes could result in an adverse impact on cessation efforts. Mr. Jacquez stated that there are plans to include questions in surveys to monitor electronic cigarette use among young people and adults.

Upon questioning from committee members, Mr. Jacquez indicated that no one seeking tobacco cessation services through the TUPAC program is turned away. Some committee members suggested that funding for services available through Medicaid should be considered in an analysis of all funding sources available for tobacco cessation efforts. The committee

members also asked questions about payments received and the services provided by health maintenance organizations. Some committee members asked for a comparison between payments received and the services provided by health maintenance organizations. Another committee member requested more specific information on the costs of services provided by health maintenance organizations. Committee members also discussed potential differences between Medicaid and non-Medicaid funding sources and between tobacco cessation and tobacco control.

A committee member commented on potential benefits of investment of the Tobacco Settlement Permanent Fund and use of investment earnings for tobacco cessation programs. Committee members asked about the DOH's decision to hire some out-of-state entities, rather than in-state entities, for contractual services. Mr. Jacquez explained that the DOH uses a request for proposals process and that any selected out-of-state entities obtained the highest scores through that process.

In response to a question from a committee member, Mr. Jacquez stated that funding recommended by the CDC for tobacco control programs does not include Medicaid and Medicare funding. A committee member commented that the DOH has realized success in tobacco cessation considering that the funding level for the TUPAC program is below the funding level recommended by the CDC and that many high-risk factors for tobacco use are present in the state. Another committee member commented that part of the reduction in tobacco use rates could be attributed to Medicaid funding. A committee member requested information from the DOH with respect to the cessation rates attributable to certain levels of spending in tobacco cessation programs. Committee members further discussed differences in funding sources for tobacco cessation and tobacco prevention. A committee member stated that Medicaid funding is used for treating the health effects of tobacco, instead of tobacco use prevention. Committee members asked for additional research on federal funding levels for Medicaid tobacco cessation.

A committee member asked Mr. Jacquez about any existing studies on the effects of clean indoor air laws on children. Mr. Jacquez said he was not aware of any studies but would follow up on that question. Committee members also asked about the price of cigarettes in New Mexico compared to other states, such as California.

A committee member inquired whether statistics presented by the DOH of smoking levels among disabled persons include persons with mental illnesses. James Padilla, DOH, responded that the statistics include people who identify themselves as having a disability and could include those with mental illnesses. Committee members also asked about the use of nicotine patches in tobacco cessation efforts. In addition, committee members asked about what funding levels would be necessary to make each school in New Mexico a tobacco-free school. Mr. Jacquez indicated that the DOH would seek to obtain that information.

Committee members also asked whether there are any restrictions regarding hookah use in the state. Mr. Jacquez said there are no restrictions on hookah bars. Committee members also asked about coordination between the TUPAC program and the WIC program. Mr. Jacquez briefly discussed the role of the DOH in training WIC participants.

A committee member asked about any recommendations for increases in funding for tobacco cessation programs. Ruby Ann Esquibel, analyst, Legislative Finance Committee, indicated that recommendations for a proposed flat budget for the DOH are being considered, with the exception of an increase in the proposed budget for the DOH facilities management program. A committee member asked about existing DOH budgeting for advertising for tobacco cessation. Mr. Jacquez indicated that the budget is approximately \$2 million.

Update on DOH Programs

Judith Gabriele, program manager, DOH, Diabetes Prevention and Control program, provided an overview of the work of the program. Ms. Gabriele pointed to statistics of growth in diabetes cases among New Mexicans. She indicated that in 2012, there were 528,250 New Mexico adults with prediabetes, constituting 35 percent of all adults in New Mexico. She also provided data on diabetes death rates by New Mexico region and stated that diabetes death rates are most prevalent in the northwest and southeast regions of the state.

Ms. Gabriele stated that 2012 costs associated with diabetes and prediabetes in New Mexico were approximately \$2.1 billion. She provided a brief overview of the DOH's FY 2014 operating budget for the Diabetes Prevention and Control program. She provided a summary of the manner in which tobacco settlement revenues were spent in FY 2014. According to Ms. Gabriele, the funds were spent as follows:

- \$81,800 for diabetes prevention;
- \$191,700 for diabetes management;
- \$160,500 for coordinated chronic disease prevention and control; and
- \$71,400 for epidemiology and data-gathering.

Ms. Gabriele provided examples of the outcomes of various diabetes prevention and control programs. For instance, she discussed results of national and community-based programs that resulted in weight loss, increased exercise and healthy meal preparation among participants. Ms. Gabriele also discussed outcomes of diabetes management programs and stated that 84 percent of enrollees completed chronic disease and diabetes self-management programs. She also indicated that the DOH provided training to 330 professionals in FY 2014.

Ms. Gabriele described the process followed by the DOH in evaluating performance of diabetes prevention and control programs. She stated that in-house evaluations are conducted. In addition, contractor narrative reports are obtained. She also indicated that ongoing oversight of contractors is provided through site visits, emails, direct observation and monitoring of invoices. Ms. Gabriele stated that if a contractor does not meet expectations, contracts are amended or terminated with appropriate notice.

Gena Love, program manager, DOH, Breast and Cervical Cancer Early Detection (BCC) program, provided statistics on women with breast cancer in New Mexico. She said each year, 1,450 women are diagnosed with invasive breast cancer and that 260 women die from the illness. She stated that mammograms provide the most effective strategy for detecting early stage breast cancer, but disparities exist among women of different ethnicities and income levels. She stated that tobacco settlement funds help the BCC program address those disparities.

Ms. Love explained that tobacco settlement funds are allocated for the provision of mammograms, primarily to women between the ages of 40 and 49. She also said that there are 18 existing provider agreements for mammography service providers located throughout the state. In FY 2014, 752 women were served with tobacco settlement funds. Ms. Love added that those funds are not used for overhead costs.

Ms. Love stated that tobacco settlement funds help the BCC program to serve more women, serve younger women and make the three-to-one match required by the CDC. She explained that CDC funds only serve 18 percent of the eligible population and require allocation of a majority of funds for women over 50 years old. Ms. Love stated that in FY 2014, tobacco settlement funds were used for three patients diagnosed with invasive breast cancer and one patient diagnosed with ductal carcinoma in situ. She said that every woman receives case management services to ensure that appropriate treatment is received after diagnosis.

Ms. Love provided the committee with an overview of the funding sources for the BCC program. In FY 2015, over \$3 million of funding for the program came from federal sources; \$871,751 was contributed by the state; \$128,600 was attributable to tobacco settlement revenue funds; and \$45,000 was attributable to two grants from the Susan G. Komen Breast Cancer Foundation.

Next, Ms. Love summarized the eligibility requirements for the BCC program. Participants must be 30 years of age or older, have incomes of 250 percent or less of the federal poverty level, lack health insurance or have health insurance with high deductibles and lack Medicaid Part B or Medicaid coverage. She stated that if participants are diagnosed with breast cancer, a case manager works with the Medical Assistance Division of the Human Services Department to enroll Medicaid-eligible women and provide access to treatment.

Ms. Love stated that since its establishment in 1991, the BCC program provided comprehensive breast and cervical cancer screening and diagnostic services to more than 150,700 women statewide, including provision of 277,900 breast exams and 1,458 diagnoses of breast cancer. According to Ms. Love, last year, the program served 10,094 women, resulting in diagnoses of 70 women with invasive breast cancer and 16 women with in-situ breast tumors.

Andrew Ganz, manager, DOH, HIV Prevention program, provided the committee with an overview of the work of the DOH in HIV, sexually transmitted disease and hepatitis reduction and prevention. He stated that funding for the hepatitis and harm reduction programs has remained flat over the past few years. He explained that 11 percent of contracts for the hepatitis program are attributable to tobacco settlement revenues used for contracts. Tobacco settlement revenues account for 34 percent of funding for contracts for the harm reduction program.

Mr. Ganz discussed some data pertaining to the hepatitis program. He said that in FY 2014, 5,162 doses of the hepatitis A and B vaccines were provided to high-risk clients and that 6,620 laboratory tests were performed. He stated that HIV counseling, testing and referral services are integrated with hepatitis outreach activities. In addition, Mr. Ganz stated that other services include distribution of clean syringes; HIV counseling, testing and referral; and

overdose prevention and education services. Naloxone, also known as Narcan, is distributed to treat opiate overdoses.

Mr. Ganz indicated that each year, more than two-thirds of participants in the statewide syringe services program attempt to enroll in alcohol or drug use treatment programs. He also stated that the DOH's overdose prevention program is rapidly growing and is one of the largest programs of its kind in the country. Mr. Ganz said that in 2013, the program assisted with 709 successful overdose reversals.

The committee members asked a number of questions following the presentations by the DOH staff members. A committee member inquired about the potential for abuse of Naloxone. Mr. Ganz explained that the drug is difficult to misuse, since it is rarely self-administered. Committee members asked about participation between the DOH and police departments with respect to overdose prevention and education services. Mr. Ganz stated that police departments have been supportive of the DOH's efforts.

A committee member asked whether the DOH provides outreach to public schools with respect to diabetes prevention. Ms. Gabriele described efforts to promote increased exercise and consumption of healthier foods among students. She also explained there are initiatives to permit students to use school exercise facilities outside of regular school hours. A committee member inquired about the efforts of the DOH to assist the family members of students in diabetes prevention programs. Ms. Gabriele pointed out that in one particular initiative, family members became involved with students in a walking program. In response to another question, Ms. Gabriele stated that she would provide the committee members with information on the amounts spent for diabetes prevention among different population groups and geographical areas.

A committee member asked whether information provided by drug or alcohol users served by the DOH included information on their first substances of use. Mr. Ganz responded that the data collected by the DOH only pertain to substances currently used by those individuals. He also stated that existing data show that many individuals use heroin upon their first use of injection equipment. He added that heroin is often cheaper to use than prescription opiates. A committee member asked whether new types of heroin are becoming more lethal to users than before. Mr. Ganz responded that some batches of heroin could be laced with other products, making the drug more dangerous.

A committee member asked why the handout presented by the DOH showed approximately one-third fewer women served by the BCC program in FY 2014 than in FY 2010. Ms. Gabriele stated that the reduced number could be attributable to the number of women enrolled in other programs. She added that one out of five women is eligible for services under the BCC program. In response to a committee member's question, Ms. Gabriele stated that Medicaid funds are often available to pay for treatment in cases where program participants have been diagnosed with cancer. She also stated that it is expected that cancer screening rates will increase with the expansion of Medicaid.

Electronic Cigarettes and Harm Reduction

Dr. Joel Nitzkin, senior fellow in tobacco policy, R Street Institute, provided the committee with articles he authored pertaining to electronic cigarettes. He indicated that for the last several decades, cigarettes have been the predominant vehicle for nicotine delivery. He stated that in addition to nicotine, cigarettes contain other harmful substances.

Dr. Nitzkin stated that cigarettes burn at high temperatures and contain high amounts of nicotine and tar materials that are absorbed by the bodies of cigarette smokers. He stated that electronic cigarettes deliver nicotine to the bodies of users in liquid form and provide satisfaction of the urge to smoke among users. He stated that electronic cigarette use, relative to conventional cigarette use, could result in a 99 percent reduction in the risk of fatal illnesses. He said the "hit" associated with electronic cigarettes is not as attractive to some users as that available from conventional cigarettes. Dr. Nitzkin added that flavoring has not attracted young people to electronic cigarette use.

Dr. Nitzkin stated that in 2011 and 2013, there have been significant reductions in conventional cigarette use among teenagers and adults. He commented that there could be some relationship between those reductions and electronic cigarette use.

Dr. Nitzkin indicated that 85 percent of the smoke created by a conventional cigarette comes off of that product. However, he stated that smoke is not expelled as secondhand smoke from an electronic cigarette. He stated that while there might be some trace quantities of heavy metals and other toxic substances present in electronic cigarettes, those amounts are not measurable. He also stated that the amounts of nicotine possibly expelled to individuals other than the user do not have a significant effect on those individuals. Dr. Nitzkin said that those amounts of nicotine are similar to the trace amounts of nicotine contained in vegetables.

Dr. Nitzkin stated that some studies have indicated that flavoring is not more attractive to teenagers than to adults. He added that flavoring is found to make adults less likely to crave conventional cigarettes.

Dr. Nitzkin outlined a number of his recommended policy considerations. He stated that many in the electronic cigarette industry support a prohibition on sales of electronic cigarettes to minors. He added that since other nicotine products, such as nicotine lozenges, inhalers, patches and gums, are available to minors and often contain flavoring, those products should be treated in a manner that is consistent with electronic cigarettes.

Dr. Nitzkin recommended that if it is found that electronic cigarettes are beneficial to public health, they should be taxed in a manner similar to other consumer products or other non-cigarette nicotine delivery products. He also briefly discussed policy considerations regarding restrictions on the places of use of electronic cigarettes. Finally, Dr. Nitzkin suggested that electronic cigarettes could be viewed as a low-cost harm reduction mechanism to reduce the number of people who smoke.

A committee member commented that some studies have revealed that cessation rates for electronic cigarette and nicotine patch users have been similar and that many adults have used

electronic cigarettes to quit smoking. Another committee member asked whether electronic cigarettes are considered to constitute tobacco cessation tools. Dr. Nitzkin responded that while studies that suggest electronic cigarettes could be tied to improved cessation rates, they are not categorized as tobacco cessation tools.

Committee members asked about whether electronic cigarettes satisfy nicotine cravings. Dr. Nitzkin noted that electronic cigarettes might satisfy nicotine cravings. He added that some individuals with mental health disorders have identified some benefits to using electronic cigarettes. However, he stated that some smokers have found that electronic cigarettes do not completely satisfy their cravings for nicotine.

A committee member expressed doubt as to whether electronic cigarettes would be more effective than pharmaceuticals and health education programs in reducing nicotine use. Dr. Nitzkin expressed support for education programs but questioned whether money spent on pharmaceuticals would effectively increase cessation rates. He added that some data suggest that electronic cigarette use has contributed to decreases in nicotine use.

A committee member asked about any affiliations between the electronic cigarette industry and the tobacco industry. Gregory Conley, American Vaping Association, stated that 30 to 35 percent of electronic cigarette products come from large tobacco companies. Committee members expressed a desire for an independent examination of the chemical components of electronic cigarettes. Dr. Nitzkin stated that about two-thirds of electronic cigarette manufacturers are not associated with tobacco companies and that many major operators have posted information on their web sites regarding electronic cigarette ingredients. In response to a question about tobacco industry studies regarding tobacco cessation rates among teenagers, Dr. Nitzkin stated that CDC data and other studies suggest that electronic cigarettes do not attract teenagers as continuing users. A committee member inquired about the entities that fund the R Street Institute.

A committee member asked if studies that tied electronic cigarettes to reduced death rates specifically tested electronic cigarette use. Dr. Nitzkin indicated that much data were based on use of products with similar nicotine levels, but those products were not electronic cigarettes. In response to another question, Dr. Nitzkin indicated that the products in electronic cigarettes are not standardized. A committee member expressed concern with any conclusion that electronic cigarettes have less nicotine than conventional cigarettes, since the products contained in electronic cigarettes are not standardized. Committee members also questioned whether lower levels of nicotine in electronic cigarettes would prompt more electronic cigarette use and whether children would be attracted to electronic cigarette flavoring. A committee member expressed concern that since electronic cigarettes are fairly new, there might be a lack of long-term data of the effects of electronic cigarette use. In response to another question, Dr. Nitzkin stated that there are few studies in mainstream American medical journals with regard to the effects of electronic cigarette use.

In response to a committee member's question, Mr. Conley said that a package of nicotine gum costs about \$20.00, while electronic cigarettes costs about \$40.00 to \$50.00 for a

two-week supply. He noted that nicotine gum is often placed on lower shelves and that store surveillance systems are not set up to assist in monitoring sales of such products to children.

A committee member asked about any pharmaceutical groups that support electronic cigarettes, and Dr. Nitzkin named the American Association of Public Health Physicians. Committee members asked about the availability of electronic cigarette sales data. Dr. Nitzkin stated that there are few data available. In response to another question, he stated that electronic cigarette liquid was previously widely made in China. Currently, he said that cigarette liquid is rarely imported.

A committee member asked about Dr. Nitzkin's previous statement, indicating that individuals with mental illnesses have benefited from electronic cigarette use. He indicated that electronic cigarettes often satisfy the nicotine cravings of those individuals.

Public Comment

Dr. Donna Upson, faculty, University of New Mexico, stated that the FDA has not found electronic cigarettes to be effective in reducing smoking rates. She added that electronic cigarette use is increasing rapidly among middle and high school students. She further expressed concern about certain information provided with respect to harm reduction impacts of electronic cigarettes. Dr. Upson also expressed support for FDA oversight of electronic cigarettes. She stated that last February, 2,400 cases of nicotine poisoning were reported and that half of those cases involved children under the age of five years old. Dr. Upson next presented an example of an internet advertisement for electronic cigarettes. She expressed concern with the marketing of electronic cigarettes to young people.

Mr. Conley provided the committee with written comments. He stated that a study of a group of former smokers shows that most of them attributed quitting smoking to the use of electronic cigarettes. Mr. Conley stated that a recent study found that more than 60 percent of adults using vapor products preferred the flavored options. He added that in the United Kingdom, 2.1 million electronic cigarette users identify themselves as former smokers. He further expressed concern that when electronic cigarettes are viewed as harmful, conventional cigarette users could be discouraged from quitting conventional cigarettes. Mr. Conley also stated that tobacco products and electronic cigarettes should be viewed as distinct products. He encouraged legislators to avoid providing for taxation of electronic cigarettes in the same bill as any proposed ban on the sale of electronic cigarettes to minors. Finally, Mr. Conley stated that if an additional tax is to be imposed on electronic cigarettes, the tax on cigarettes should be significantly increased.

Freddie Olsen stated that he is the owner of a vapor store. He stated that his business contributes to the economy by paying taxes and paying rent in a previously vacant facility. He urged committee members not to equate vaping businesses with the tobacco businesses. He stated that his business helps transition customers out of conventional cigarette use. Mr. Olsen additionally stated that 90 percent of his customers use e-liquid and that 40 percent are using the lowest amount of nicotine available in electronic cigarettes.

Sandra Adondakis, American Cancer Society, commented that the emergence of electronic cigarettes could distract from best practices recommended by the CDC. She suggested continued consideration of increased tobacco taxes, expansion of the Dee Johnson Clean Indoor Air Act and continued funding for tobacco cessation programs.

Joanna Struther, American Lung Association, expressed support for electronic cigarette being defined as "tobacco products" and stated that a new definition for vapor products should not be created.

Ellie Choate expressed support for laws favorable to electronic cigarette products. Ms. Choate stated that she would discourage removal of the option of electronic cigarette use as an alternative to conventional cigarette use. Representative Thompson stated that the committee was not considering the possibility of banning the sale of electronic cigarettes

Summary of Findings of the Tobacco Use and Employer Costs Task Force

Heather Balas, president and executive director, New Mexico First, provided the committee with a description of the background of the task force established pursuant to Senate Memorial 22 in 2013. The memorial called for the "formation of a task force to study the relationship between tobacco use and employer costs, including the impacts on organizations that employ tobacco users". The task force was asked to recommend changes in law to minimize losses in workplace productivity and costs associated with tobacco use. Ms. Balas explained that New Mexico First was asked to manage the task force. She mentioned that a number of legislators and representatives from a number of disciplines were task force members.

Ms. Balas and Dr. Denise Gonzales, Presbyterian Healthcare Services, a task force member, summarized the 12 recommendations of the task force. The recommendations include legislative policy recommendations, funding and tax policy recommendations and voluntary employer or insurer recommendations. Ms. Balas discussed the first three recommendations of the task force, including recommendations to modify the Employee Privacy Act to:

- permit businesses to choose whether to hire smokers;
- allow employers in certain sectors, such as health care and education, to choose whether to hire smokers; and
- allow employers to prohibit smoking off-premises during work hours, including during breaks, meal times and when employees are working off-site.

Dr. Gonzales summarized the remaining nine recommendations. The recommendations include:

- requiring all health insurance plans to include evidence-based comprehensive treatment for tobacco dependence in their benefit packages;
- asking the appropriate legislative committee to evaluate wellness programs, with a focus on smoking cessation programs;
- funding tobacco use prevention and cessation programs at the level recommended by the CDC;

- reinstating tobacco cessation and prevention funding for collaborative work with tribes and the Indian Affairs Department;
- increasing the cigarette tax;
- increasing taxes on other tobacco products and electronic cigarettes; and
- providing tax incentives for employers offering evidence-based tobacco cessation programs.

A committee member asked about any funding sources for New Mexico First and whether funding sources are made public. Ms. Balas indicated that New Mexico First's funding sources are public information and that the contract for New Mexico First's work on managing the task force was funded by Presbyterian Healthcare Services. In response to another question from a committee member, Ms. Balas affirmed that, pursuant to the Employee Privacy Act, it is against the law for an employer to ask a potential employee whether he or she smokes.

Approval of Minutes

Upon a motion made and seconded, the minutes of the third meeting of the TSROC were approved.

Adjournment

There being no further business, the TSROC adjourned at 4:05 p.m.

**MINUTES
of the
FIFTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**November 6, 2014
State Capitol, Room 321
Santa Fe**

The fifth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Senator Cisco McSorley, co-chair, on November 6, 2014 at 9:30 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Jim R. Trujillo
Rep. Monica Youngblood

Absent

Rep. Elizabeth "Liz" Thomson, Co-Chair
Sen. John C. Ryan
Sen. John Arthur Smith

Advisory Members

Rep. Kelly K. Fajardo
Sen. Linda M. Lopez*
Sen. Mary Kay Papen

Rep. Paul C. Bandy
Rep. Gail Chasey

* Senator Lopez was appointed by Senate President Pro Tempore Papen as a voting member to constitute a quorum.

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Michelle Jaschke, Researcher, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

All handouts and other written testimony are in the meeting file.

Thursday, November 6

Welcome and Introductions

Senator McSorley welcomed committee members and guests.

Tobacco Settlement Permanent Fund (TSPF) Asset Allocation

Steven K. Moise, state investment officer, State Investment Council (SIC), and Vince Smith, deputy state investment officer, SIC, presented TSPF investment performance information and recommendations for TSPF asset allocation. Mr. Moise reported that TSPF assets amounted to \$192.1 million as of September 30, 2014 and that the fund had an investment return rate of 11.88 percent for the year ending September 30, 2014. He observed that this represents a growth of \$13.5 million in the fund over the last 12 months. A total of \$29.4 million was distributed from the fund in June 2014, a total of \$8.2 million above the reduced annual settlement amount. Mr. Moise informed the committee that this is the first time that the corpus of the fund has been used to satisfy appropriations.

Mr. Smith reviewed the fiscal year (FY) 2014 TSPF investment performance and provided data projecting that investment returns will drop dramatically over the next 10 years. He stated that if the committee is willing to move the fund in another direction, the TSPF will get better returns by diversifying assets and allocating more to private equity investments. Mr. Smith identified the reserve status of the fund and the uncertainties that remain with regard to pending tobacco settlement litigation as major issues affecting TSPF returns on investment. He also noted that no new funds have been added to the TSPF since FY 2008 and that the practice of zero contributions makes it difficult to grow the corpus of the fund.

Several options to improve the health of the TSPF were discussed by the committee. Mr. Smith reported that the SIC suggests that the fund be removed from reserve status and managed as a true permanent fund. In addition, the SIC recommends reinvesting fully half of the proceeds from the tobacco settlement revenue into the corpus of the TSPF and creating a revenue stream, perhaps from tobacco surcharges or taxes, to feed the corpus of the fund. These changes would require legislative action, according to Mr. Smith.

Peter B. van Moorsel, chief economist, Legislative Finance Committee (LFC), responded to members' questions regarding repayment of TSPF funds "borrowed" by the general fund. Mr. van Moorsel reported that for a period of five years (FY 2009 through FY 2013), 50 percent of the Master Settlement Agreement (MSA) funds that feed the TSPF were used to satisfy general fund obligations, a diversion of approximately \$100 million. Ms. Baker presented a report on TSPF appropriations showing fund outflows, including nonrecurring program costs in FY 2014 and prior years. She reported that much of the TSPF money that was diverted during that five-year period was used to ensure Medicaid solvency.

Committee members and the SIC panelists discussed where the fund would be if the 50 percent of fund proceeds that were to have fed the fund had not been diverted, including calculating the income that would have been earned from the diverted \$100 million. The committee also sought to include in its calculation the lost future returns on investment as efforts are made to restore the fund and the additional amount needed for the corpus of the fund to enable restoration of certain funding cuts that have been made in program appropriations.

Members and the SIC representatives discussed a plan to add \$53 million per year to the corpus of the TSPF over a period of five years to restore the fund. Mr. Smith reported that the

SIC estimates that with restoration of the fund and enactment of the proposed statutory changes to the TSPF, the fund has a 50 percent chance of maintaining a 6.6 percent rate of return over time. Panelists agreed that the relatively high rates of return previously enjoyed by the fund are not projected to continue. Members discussed possibilities for sponsorship of the proposed legislation, and the co-chair asked that the likely sponsors meet with the LFC and the SIC to discuss proposals to restore the fund, to change the reserve status of the TSPF and to modify the fund's asset allocations.

Tobacco Settlement Permanent and Program Funds; Revenue Projections

Mr. van Moorsel presented a tobacco settlement revenue update and projections for FY 2015 and FY 2016. He reported that the MSA revenue that flows to the TSPF decreased in FY 2014 due to a reduction in the settlement payment pursuant to a successful challenge by participating manufacturers (PMs) of New Mexico's enforcement of the MSA. The FY 2014 payment of \$21.2 million was below the \$39.3 million received in FY 2013. MSA revenue in FY 2015 is projected to be \$39.9 million, and revenue in FY 2016 is estimated to be \$40.1 million. The forecast remains subject to uncertainty surrounding the nature and timing of any subsequent challenges by PMs of New Mexico's enforcement of the MSA.

The General Appropriation Act of 2014 included contingency language to ensure that programs funded with tobacco MSA funds are kept whole in the event of revenue reductions pursuant to a legal challenge. Any shortfall in MSA funds would be made up with a transfer from the TSPF. Mr. van Moorsel observed that the MSA revenue amounts are unpredictable and present a budgeting challenge because appropriations must be determined prior to knowing the actual amount of MSA revenue that will be available.

Proposed Legislation for Committee Endorsement

Ms. Baker presented two versions of legislation to prohibit the sale of electronic nicotine delivery devices to minors. One of the bills was a duplicate of House Bill 15 from the 2014 legislative session. The co-chair asked Ms. Baker to address the differences between the two bills. Ms. Baker stated that the bills differ in that one defines and uses the term "e-cigarette" whereas the other bill defines "tobacco product" to include e-cigarettes. In addition, one bill would provide an exemption for the use of tobacco products in connection with the practice of cultural or ceremonial activities by Native Americans and would also restrict vending machine sales of tobacco products to age-controlled locations where minors are not permitted, eliminating other venues for vending machine sales. Representative Youngblood reported that the legislation that she will sponsor is unchanged from last year, and she asked for the committee's endorsement of that version of the bill over the newly presented legislation. Following further discussion, Representative Youngblood agreed to include the exemption for the use of tobacco products in connection with the practice of cultural or ceremonial activities by Native Americans and the changes concerning vending machines.

The co-chair asked for public comment on the proposed legislation. Chris Croom, representing an e-cigarette trade organization, asked that e-cigarettes not be labeled as tobacco products. He observed that 36 other states have banned sales to minors without defining electronic cigarettes as tobacco products. Scott Scanland, representing Altria, stated that defining electronic cigarettes as tobacco products may help to remove stumbling blocks that

prevented the legislation from passing last year. Sandra Adondakis, American Cancer Society Cancer Action Network, spoke in support of the new definition of electronic cigarettes as tobacco products, noting that the federal Food and Drug Administration has already stated that it is planning to come out with a ruling next spring that will establish this definition at the federal level.

Stephen Beckers, representing another trade organization that represents more than 125,000 e-cigarette users, stated that he has been in business since 2009 and that the industry is opposed to sales to minors. He reported that the industry's products offer the potential to use nicotine products, but only about one-third of users actually use the products for nicotine delivery. Mr. Beckers asserted that it is the chemicals and other cancer-causing agents in cigarettes and not necessarily the nicotine contained therein that make cigarettes addictive and a risk to health.

On a motion made and seconded, the committee voted three to one to endorse Representative Youngblood's version of the proposed legislation, amended to include the exemption for the use of tobacco products in connection with the practice of cultural or ceremonial activities by Native Americans and the changes related to vending machines.

On a motion made and seconded, the committee considered endorsement of the other proposed bill to prohibit the sales of electronic delivery devices to minors. The motion failed on a vote of two to two.

Ms. Baker presented proposed legislation that would amend the Tobacco Products Tax Act to impose a tax on nicotine products and require nicotine content labeling for nicotine products. The name of the act would be changed to the Tobacco and Nicotine Products Tax Act (TNPTA). The proposed act defines "electronic delivery devices" and the nicotine products used in such devices. The TNPTA would impose a tax of \$0.04 per milligram of nicotine contained in nicotine products.

Mr. Croom objected to the proposed taxation as excessive and prohibitively expensive for users. Ms. Adondakis reported that by her calculation, the tax amounts to only one-half of that imposed on other tobacco products. Hector Dorbecker, economist, LFC, clarified that the proposed level of taxation is gauged to reflect the same level of taxation as that currently imposed on tobacco products, based on a comparison of the amount of nicotine in the products. Discussion ensued about how the tax would be calculated, and the co-chair noted that the tax is based only on the amount of nicotine contained in the nicotine products, not on the total volume of the product. The co-chair stated that he would sponsor the proposed legislation in the upcoming legislative session. Mr. Beckers expressed support for the legislation but asserted that the industry would like to see the tax revenue go directly to fund cancer projects.

On a motion made and seconded, the committee voted unanimously to endorse the proposed legislation. The co-chair agreed to work with interested parties to finesse the language of the bill to ensure appropriate labeling requirements and to address related stakeholder concerns.

Pamelya Herndon, executive director, Southwest Women's Law Center, presented information on the Breast and Cervical Cancer Early Detection Program (BCCEDP). She explained that new 3-D mammography provides important and potentially life-saving early detection opportunities. Ms. Herndon asked for the committee's support for a \$1.2 million increase in funding for the BCCEDP for a period of at least one year to enable access to the new technology for low-income women served by the project.

Members discussed the constraints of the TSPF budget as they attempted to adjust funding to meet the request for additional resources for early detection of breast and cervical cancer. Ms. Baker informed the committee that funding for the Family Infant Toddler Program is a new request for FY 2016 funding. On a motion made and seconded, the committee voted unanimously to recommend the same funding levels as last year with the following adjustments: move \$1 million in funding from the Medicaid line item to the BCCEDP line item for 3-D mammography; and add \$5 million in funding for the Family Infant Toddler Program for FY 2016.

On a motion made and seconded, the committee voted unanimously to approve the minutes of the meeting of October 14, 2014.

Adjournment

There being no further business before the committee, the fifth meeting of the TSROC for the 2014 interim adjourned at 1:05 p.m.